

No. 126, Original



In The
Supreme Court of the United States



STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

Defendants.



BEFORE THE OFFICE OF THE SPECIAL MASTER



**SUPPLEMENTAL AMENDED NOTICE OF DEPOSITION
OF MR. MARVIN SWANDA AND SUBPOENA DUCES TECUM**

TO: Mr. Marvin Swanda
c/o John B. Draper
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, New Mexico 87504

Pursuant to Case Management Plan No. 2 ("CMP") in the above-captioned matter and Fed. R. Civ. P. 45, as incorporated by the CMP, you are hereby ORDERED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action and recorded by a certified court reporter by stenographic and electronic means.



Time: 8:00 a.m. to 5:00 p.m.
Date: May 22, 2012
Location: Nebraska Attorney General's Office
1221 N Street, Suite 601
Lincoln, Nebraska 68508

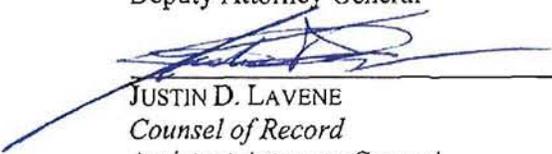
The State of Nebraska hereby requests that you bring to this deposition any supplemental materials, information, data, model runs, studies, reports, electronic and other communications, maps, GIS information and data, or any other tangible things used for testimony in this action.

The Case Management Plan for this action is attached hereto as Exhibit A. The provisions of Rule 45(c) and (d) of the Federal Rules of Civil Procedure are attached hereto as Exhibit B, as required by Rule 45(a)(1)(A)(iv) of the Federal Rules of Civil Procedure. This Subpoena is issued pursuant to Fed. R. Civ. P. 45(a)(3)(B) by Justin D. Lavene, Counsel of Record for the State of Nebraska, Nebraska Attorney General's Office, 2115 State Capitol, Lincoln, Nebraska, 68509.

Respectfully submitted this 3rd day of May, 2012.

STATE OF NEBRASKA,

JON C. BRUNING
Attorney General of Nebraska
DAVID D. COOKSON
Deputy Attorney General



JUSTIN D. LAVENE
Counsel of Record
Assistant Attorney General
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tom@aqualawyers.com

Attorneys for State of Nebraska

No. 126, Original

In The
Supreme Court of the United States

◆
STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

Defendants.

◆
CERTIFICATE OF SERVICE

I, Justin D. Lavene, counsel for the State of Nebraska in the above-captioned matter, hereby certify that on May 3, 2012, the original and one copy of SUPPLEMENTAL AMENDED NOTICE OF DEPOSITION OF MR. MARVIN SWANDA AND SUBPOENA DUCES TECUM were e-mailed and/or mailed to the non-party deponent and all parties as indicated in Appendix A of Case Management Plan No. 2 dated October 17, 2011.

I further certify that on the same date, this Certificate of Service was distributed to the parties listed below as specified in Appendix A of the Case Management Plan:

Hon. William J. Kayatta, Jr.
Special Master
PIERCE ATWOOD LLP
One Monument Square
Portland, ME 04101
eumland@PierceAtwood.com

Autumn L. Bernhardt
Counsel of Record
Assistant Attorney General
Federal & Interstate Water Unit
Natural Resources & Environment Section
1525 Sherman Street, 7th Floor
Denver, CO 80203
autumn.bernhardt@state.co.us
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John B. Draper
Counsel of Record
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Chris.Grunewald@ksag.org
Burke.Griggs@kda.ks.gov



Justin D. Lavene
Counsel of Record



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

JUSTIN D. LAVENE
CHIEF OF THE AGRICULTURE,
ENVIRONMENT & NATURAL
RESOURCES SECTION

May 3, 2012

VIA U.S. MAIL

James DuBois
U.S. Department of Justice
999 18th Street
South Terrace Suite 370
Denver, CO 80202

Marvin Swanda c/o
John Chaffin
Office of the Solicitor
P.O. Box 31394
Billings, MT 59107-1394



Re: *Touhy* Request and Amended Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum in *Kansas v. Nebraska*, No. 126, Original

Dear Sirs:

The State of Nebraska is providing the Bureau of Reclamation with a supplemental *Amended Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum* and *Touhy* Request. As you know, Mr. Swanda was identified by the State of Kansas as a non-expert witness expected to testify in *Kansas v. Nebraska*, No. 126, Original on March 15, 2012. For various reasons, Mr. Swanda was not timely made available to Nebraska for deposition during the discovery period authorized by Case Management Order No. 4. On Motion, Nebraska requested leave to depose Mr. Swanda out of time, and that motion was granted by the Special Master by Order of April 26, 2012.

The justification for this request generally is set forth in Nebraska's March 30, 2012 *Touhy* Request and is incorporated herein by this reference. A copy of that request is attached as Exhibit A. The scope of the requested testimony is the same as that previously requested.

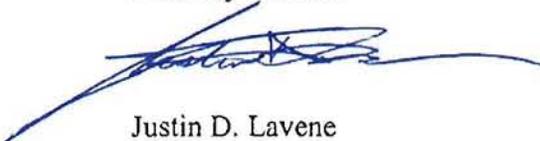
Nebraska has scheduled the deposition for 8:00 AM to 5:00 PM on May 22, 2012 as set out in Nebraska's Supplemental Amended Notice of Deposition of Mr. Marvin Swanda and

Subpoena *Duces Tecum* accompanying this request. I understand the time and place of this deposition is convenient for you both.

Nebraska will submit a check for costs to the Department of Interior in accordance with 43 CFR § 2.85, if this request is granted.

Very truly yours,

JON BRUNING
Attorney General

A handwritten signature in blue ink, appearing to read "Justin D. Lavene", with a long horizontal flourish extending to the right.

Justin D. Lavene
Counsel of Record
Assistant Attorney General

Enclosures



STATE OF NEBRASKA
Office of the Attorney General

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JON BRUNING
ATTORNEY GENERAL

JUSTIN D. LAVENE
CHIEF OF THE AGRICULTURE,
ENVIRONMENT & NATURAL
RESOURCES SECTION

March 30, 2012

VIA U.S. MAIL

Aaron M. Thompson
Area Manager
U.S. Bureau of Reclamation
203 West 2nd Street
Grand Island, NE 68801

Jim Dubois
U.S. Department of Justice
999 18th Street
South Terrace Suite 370
Denver, CO 80202

John Chaffin
Office of the Solicitor
P.O. Box 31394
Billings, MT 59107-1394

**Re: *Touhy* Request and Amended Notice of Deposition of Mr. Marvin Swanda
and Subpoena Duces Tecum in *Kansas v. Nebraska*, No. 126, Original**

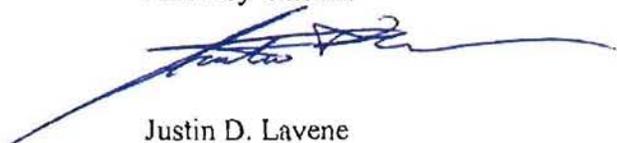
Messrs.:

The State of Nebraska respectfully requests that Mr. Marvin Swanda appear for deposition and provide the testimony, documents and information specified in Kansas' *Touhy* Request dated March 30, 2012, for use in the above-referenced litigation. A copy of the Petition filed by Kansas, along with a copy of Nebraska's Answer and Counterclaims are attached hereto as Exhibit A pursuant to 43 C.F.R. § 2.84(b). A copy of the current Case Management Plan governing this proceeding is attached to the accompanying Amended Notice of Deposition and Subpoena Duces Tecum as Exhibit A. Nebraska will submit a check for costs to the Department of Interior in accordance with 43 CFR S 2.85 if its request is granted. In addition, Nebraska will pay the costs of duplication in accordance with 43 CFR, Part 2, Appendix A, if its request is granted.

The reasons supporting the Kansas *Touhy* are incorporated herein by this reference. A copy of the Kansas' *Touhy* is attached hereto as Exhibit B.

Very truly yours,

JON BRUNING
Attorney General

A handwritten signature in blue ink, appearing to read "Justin D. Lavene", with a long horizontal flourish extending to the right.

Justin D. Lavene
Counsel of Record
Assistant Attorney General

Enclosures

EXHIBIT B



JOHN B. DRAPER
Direct: (505) 986-2525
Email: jdraper@montand.com
Reply To: Santa Fe Office
www.montand.com

March 30, 2012

By U.S. Mail and Email

Aaron M. Thompson
Area Manager
U.S. Bureau of Reclamation
203 West 2nd Street
Grand Island, NE 68801
athompson@gp.usbr.gov

**Re: Touhy Request (Revised) for Testimony of Mr. Marvin Swanda
in *Kansas v. Nebraska & Colorado*,
No. 126, Orig., U.S. Supreme Court**

Dear Mr. Thompson:

The State of Kansas requests that Mr. Marv Swanda appear as a witness in the above-referenced case. The trial in this case will be scheduled for the period August 8-31, 2012 before Special Master William J. Kayatta. Statement of Special Master William J. Kayatta, Status Conference, March 23, 2012. In anticipation of this Touhy Request, the State of Kansas submitted Kansas' Disclosure of Defensive Expert Testimony and Non-Expert Witnesses in this case on March 15, 2012, listing Mr. Swanda, a copy of which is attached hereto. In addition, the State of Nebraska has scheduled a deposition of Mr. Swanda for April 3, 2012 as set out in Nebraska's Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum, a copy of which is attached hereto (without exhibits). I understand that the time and place of this deposition are convenient for Mr. Swanda.

Kansas will submit a check for costs to the Department of Interior (Department), in accordance with 43 CFR § 2.85, if required.

The requested testimony is expected to be helpful and relevant in resolving the current dispute among the States of Kansas, Nebraska and Colorado (States) regarding Nebraska's compliance with the Supreme Court Decree (Decree) of May 19, 2003,

REPLY TO:

325 Paseo de Peralta
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6301 Indian School Road NE, Suite 400
Albuquerque, New Mexico 87110
Telephone (505) 884-4200 • Fax (505) 888-8929
Post Office Box 36210
Albuquerque, New Mexico 87176-6210

Aaron M. Thompson
March 30, 2012
Page 2

enforcing the Republican River Compact (Compact). The Decree is found at 538 U.S. 720 (2003). The Final Settlement Stipulation (FSS), which is approved by the Decree, is found on the U.S. Supreme Court website at <http://www.supremecourtus.gov/SpecMastRpt/SpecMastRpt.html>.

The U.S. Bureau of Reclamation (Reclamation) has projects in all three States. The United States appeared as an *amicus curiae* (friend of the Court) in the proceeding in the original jurisdiction of the United States Supreme Court, and, with significant input from Reclamation, was a full participant in the negotiations that resulted in the Decree. See Second Report of the Special Master (Subject: Final Settlement Stipulation), *Kansas v. Nebraska & Colorado*, No. 126, Orig., at 24-25 and App. E (2003) (also found at the U.S. Supreme Court website address cited above). Reclamation, including Mr. Swanda, provided testimony on April 14, 2009 in the non-binding arbitration initiated 10/21/08 before Arbitrator Karl J. Dreher, in this matter.

Mr. Swanda's testimony is not reasonably available from any other source. Mr. Swanda, as a former long-time Reclamation employee, possesses knowledge of the historical operations of the Reclamation projects in the Republican River Basin ("RRB") that no other single person possesses. Mr. Swanda will be able to testify to facts of which he has personal knowledge during the period of Mr. Swanda's employment. Specifically, Mr. Swanda's testimony would consist of the following subjects if this Touhy Request is approved, each subject limited to the knowledge he gained during the time of his employment at Reclamation.

1. Documentation of the initiation and operations of the RRB Reclamation projects.
2. Concerns of Reclamation regarding groundwater use above Reclamation projects and how those concerns were documented.
3. Concerns of Reclamation regarding Nebraska's Integrated Management Plans and how these concerns were documented.

Mr. Swanda's direct testimony will be pre-filed written testimony. He will be subject to cross-examination and redirect examination during the trial.

There is no record or set of records that can be provided and used in lieu of Mr. Swanda's testimony. While certain public Reclamation documents will be relevant, his testimony is necessary in order to provide the foregoing facts in an efficient way to the Supreme Court Special Master.

I believe this request for Mr. Swanda's testimony complies with 43 CFR § 2.88 because: (a) the testimony is not available from another source as explained above; (b) the testimony, to our knowledge, would not be inconsistent with any other federal

Aaron M. Thompson
March 30, 2012
Page 3

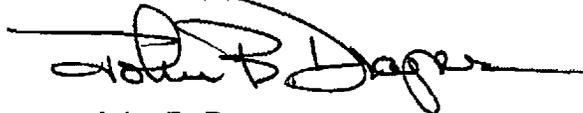
statute or regulation; and (c) the testimony would be consistent with the Department's ability to

- (1) Conduct its official business unimpeded: Every effort will be made to schedule your testimony at a time to minimize as much as possible any interference with your schedule and official obligations;
- (2) Maintain impartiality in conducting the Department's business: The testimony would be consistent with Reclamation's policies applicable to its projects in the Basin for the benefit of water users in both Nebraska and Kansas;
- (3) Minimize the possibility that the Department will become involved in issues that are not related to its mission or programs: This proceeding raises issues that are central to Reclamation's mission and programs in the Nebraska-Kansas Area of Reclamation's Great Plains Region and is likely to affect the future viability of Reclamation's projects there;
- (4) Avoid spending public employee's time for private purposes: Your testimony will contribute to two important public purposes, namely, achieving compliance with a U.S. Supreme Court Decree enforcing an interstate compact and enhancing the viability of Reclamation projects in the Basin;
- (5) Avoid the negative cumulative effect of granting similar requests: Given the unique character of the present interstate proceeding, it is not expected that there will be any similar requests that would have a negative cumulative effect on the Department;
- (6) Ensure that privileged or protected matters remain confidential: No privileged or protected matters will be inquired into by Kansas in the course of your testimony; the Case Management Plan entered by the Special Master in this proceeding protects privileged matters; and
- (7) Avoid undue burden on the Department: Kansas will make every effort, and we expect the other States to cooperate fully, to minimize any impact on your other responsibilities.

Aaron M. Thompson
March 30, 2012
Page 4

Thank you very much for your consideration. I would be glad to provide any additional information that would be helpful.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John B. Draper", with a long horizontal line extending to the right.

John B. Draper

JBD:dlo

cc: (by email) (w/attachments)
Donald B. Verrilli, Jr., US Sol. Gen.
James J. DuBois, Esq., USDOJ
John Chaffin, Esq., USDOJ
Patrick Erger, USDOJ
Justin Lavene, Esq., State of Nebraska
Autumn Bernhardt, Esq., State of Colorado

No. 126, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

Defendants.

Before The Honorable William J. Kayatta, Jr.
Special Master

**KANSAS' DISCLOSURE OF
DEFENSIVE EXPERT TESTIMONY
AND NON-EXPERT WITNESSES**

The State of Kansas, pursuant to Paragraph 7 of Case Management Plan No. 2, provides
herewith the following defensive expert disclosures:

1. Expert Witness: Dale E. Book
 Expert Report: Response to Expert Report of James C. Schneider, Ph.D., on
 Nebraska's Proposed Changes to the RRCA Accounting
 Procedures

2. Expert Witness: Steven P. Larson
 Expert Reports: Response to Expert Report of James C. Schneider, Ph.D., on
 Nebraska's Proposed Changes to the RRCA Accounting
 Procedures

As part of this Disclosure of Defensive Expert Testimony, Kansas gives notice that it may offer the following documents as exhibits to summarize or support the opinions to be expressed by the foregoing experts:

1. The expert report listed above.
2. Resumes for each of the expert witnesses, already provided.
3. Any part of the expert report listed above.
4. All documents listed as references in the expert report listed above.
5. All exhibits identified in Kansas' Initial Disclosure of Expert Testimony.

The expert report listed above is being provided herewith.

The State of Kansas, pursuant to Case Management Order No. 4, ¶ 1, discloses the following witnesses who may be called to offer non-expert testimony:

1. All persons identified as expert witnesses by the State of Kansas.
2. Scott E. Ross
3. Sam Perkins
4. Kenneth Nelson
5. L. Michael Brzon
6. Marv Swanda
7. Brad Edgerton
8. Mike Delka
9. Roger Patterson
10. Ann Bleed
11. Brian Dunnigan
12. Paul Koester

13. Mike Clements
14. Dan Smith
15. John Thorburn
16. Jasper Fanning
17. Any witness listed by Nebraska or Colorado.

Respectfully submitted,

Derek Schmidt
Attorney General
John W. Campbell
Chief Deputy Attorney General
Jeffrey A. Chanay
Deputy Attorney General
Christopher M. Grunewald
Assistant Attorney General
Burke W. Griggs
Special Assistant Attorney General



John B. Draper
Special Assistant Attorney General
Counsel of Record
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, New Mexico 87504
(505) 982-3873

No. 126, Original

IN THE
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Before The Honorable William J. Kayatta, Jr.
Special Master

KANSAS' CERTIFICATE OF SERVICE

I hereby certify that Kansas' Disclosure of Defensive Expert Testimony and Non-Expert Witnesses, together with a copy of the defensive expert report identified therein, was sent by U.S. Mail and email, this 15th day of March, 2012, as shown below. I further certify that all parties required to be served have been served.

William J. Kayatta, Jr.
Special Master
Pierce Atwood LLP
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eumland@PierceAtwood.com
(4 copies by U.S. Mail)

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Federal & Interstate Water Unit
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(1 copy by U.S. Mail)

Donald B. Verrilli, Jr.
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Washington, D.C. 20530-0001
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supremectbriefs@usdoj.gov
(1 copy by U.S. Mail)

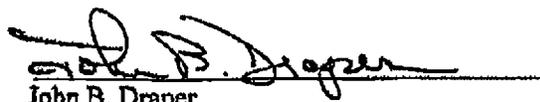
Chad M. Wallace
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(1 copy by U.S. Mail)

And by email to:

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Blake E. Johnson
blake.johnson@nebraska.gov

James J. DuBois
james.dubois@usdoj.gov


John B. Draper
Counsel of Record
State of Kansas

No. 126, Original

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**NOTICE OF DEPOSITION OF MR. MARVIN SWANDA
AND SUBPOENA DUCES TECUM**

TO: Mr. Marvin Swanda
c/o John B. Draper
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, New Mexico 87504

Pursuant to Case Management Plan No. 2 ("CMP") in the above-captioned matter, attached hereto as Exhibit A, and Fed. R. Civ. P. 45, as incorporated by the CMP, you are hereby ORDERED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action and recorded by a certified court reporter by stenographic and electronic means.

Time: 1:00 p.m. to 5:00 p.m.
Date: April 3, 2012
Location: Nebraska Attorney General's Office
1221 N Street, Suite 601
Lincoln, Nebraska 68508

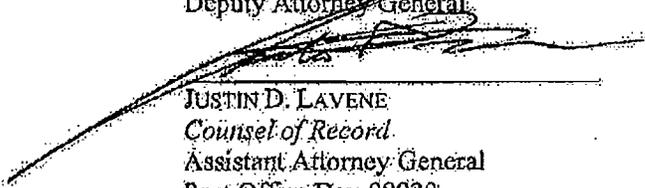
The State of Nebraska hereby requests that you bring to this deposition any supplemental materials, information, data, model runs, studies, reports, electronic and other communications, maps, GIS information and data, or any other tangible things used for testimony in this action.

The Case Management Plan for this action is attached hereto as Exhibit A. The provisions of Rule 45(c) and (d) of the Federal Rules of Civil Procedure are attached hereto as Exhibit B, as required by Rule 45(a)(1)(A)(iv) of the Federal Rules of Civil Procedure. This Subpoena is issued pursuant to Fed. R. Civ. P. 45(a)(3)(B) by Justin D. Lavenc, Counsel of Record for the State of Nebraska, Nebraska Attorney General's Office, 2115 State Capitol, Lincoln, Nebraska, 68509.

Respectfully submitted this 22nd day of March, 2012.

STATE OF NEBRASKA,

JON C. BRUNING
Attorney General of Nebraska
DAVID D. COOKSON
Deputy Attorney General



JUSTIN D. LAVENE
Counsel of Record
Assistant Attorney General
Post Office Box 98920
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DONALD G. BLANKENAU
THOMAS R. WILMOTH
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tom@aqualawyers.com

Attorneys for State of Nebraska



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

IN REPLY REFER TO:

GP-4100
LAW-5.10

APR - 6 2012

RETURN RECEIPT REQUESTED

Mr. Justin D. Lavene
Assistant Attorney General
State of Nebraska
1445 K Street
Lincoln NE 68508-2731

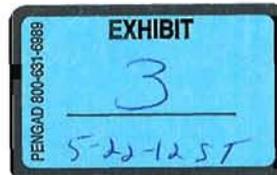
Subject: Touhy Request and Amended Testimony of Mr. Marvin Swanda, and Subpoena
Duces Tecum in *Kansas v. Nebraska & Colorado*, No. 126, Original, U.S. Supreme
Court, Letters Dated: March, 30, 2012

Dear Mr. Lavene:

The Bureau of Reclamation, as well as the Department of the Interior Solicitor's Office, and the Department of Justice received your Touhy Request, and Subpoena regarding No. 126, Original, U.S. Supreme Court. As requested in your letter, we continue expeditious efforts to make the information and testimony you have requested available within time limits imposed by the ongoing interstate litigation, while also ensuring compliance with the Department's regulations.

The State of Nebraska served Mr. Swanda a *Subpoena Duces Tecum* on March 22, 2012, and in accordance with 43 CFR §2.83, the Bureau of Reclamation received an electronic copy of the required Touhy Request at 7:40pm (CDT), Friday, March 30, 2012. Due to the short time available for review of the request, authorization for testimony could not be obtained prior to the date scheduled for the deposition. In accordance with 18 USC §207, Mr. Swanda did not testify at the April 03, 2012, scheduled deposition in Lincoln, Nebraska.

The March 30, 2012, Touhy Request from the State of Kansas, which you incorporated into your Touhy Request, states: "Mr. Swanda's testimony is not reasonably available from any other source. Mr. Swanda, as a former long-time Reclamation employee, possesses knowledge of the historical operations of the Reclamation projects in the Republican River Basin ("RRB") that no other single person possesses. Mr. Swanda will be able to testify to facts of which he has personal knowledge during the period of his employment. Specifically, Mr. Swanda's testimony would consist of the following subjects if this Touhy Request is approved, each subject limited to the knowledge he gained during the time of his employment at Reclamation.



1. Documents of the initiation and operations of the RRB Reclamation projects.
2. Concerns of Reclamation regarding groundwater use above Reclamation projects and how those concerns were documented.
3. Concerns of Reclamation regarding Nebraska's Integrated Management Plans and how these concerns were documented."

I am granting your request for Mr. Swanda's testimony subject to the following limitations:

- 1) Mr. Swanda is authorized to provide testimony based on his personal knowledge, gained during the time of his employment at Reclamation and relating to:
 - a) Documents of the initiation and operations of the RRB Reclamation projects.
 - b) Document concerns of Reclamation regarding groundwater use above Reclamation projects based on his own personal experience.
 - c) Document concerns of Reclamation regarding Nebraska's Integrated Management Plans up to the time of his retirement from Reclamation which was December 31, 2010.
- 2) Mr. Swanda may offer lay opinions or inferences rationally based on Mr. Swanda's own perceptions and not based on scientific, technical, or other specialized knowledge within scope of Rule 702. Rule 701, FRE.
- 3) Mr. Swanda is not authorized to offer expert testimony including testimony in the form of opinion or otherwise based on scientific, technical, or other specialized knowledge related to his work for Reclamation.
- 4) Because he is not authorized to offer expert testimony, Mr. Swanda may not answer hypothetical questions based on information presented at or before the hearing or deposition, including facts not within his personal knowledge.
- 5) Mr. Swanda is not authorized to testify as to matters or actions of Reclamation arising after his separation from Reclamation.
- 6) Mr. Swanda is not authorized to testify to official policies of Reclamation or to any interpretations of law by Reclamation, the Office of the Solicitor or the Secretary of the Interior.

Mr. Swanda, as a former employee, does not possess any documents responsive to the Subpoena Duces Tecum.

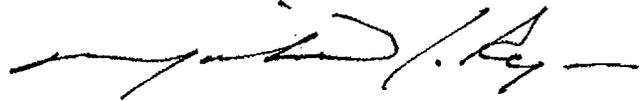
When Reclamation receives a copy of Mr. Swanda's updated subpoena, we will advise him of this approval, and the parameters of his authorization to testify.

In accordance with 43 C.F.R. § 2.85, you stated your willingness to pay the applicable fees, if approval to your Touhy Request regarding Mr. Swanda was granted. Since Mr. Swanda is a retired employee, the costs associated with his travel and related expenses will need to be coordinated directly with him.

Please feel free to contact Mr. Aaron Thompson (AThompson@usbr.gov), Donna Hirning (DHirning@usbr.gov), or John Chaffin (John.Chaffin@sol.doi.gov) regarding this Touhy Request.

Thank you for your courtesy and cooperation in this matter.

Sincerely,



Michael J. Ryan
Regional Director

cc: Mr. John Draper
Counsel of Record, State of Kansas
Montgomery and Andrews
Santa Fe, NM 87501

Mr. Marvin Swanda
c/o McCook Field Office (NK-410)
1706 West Third
McCook, NE 69001

Ms. Autumn Bernhard
Counsel of Record for the State Colorado
Assistant Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

James J. DuBois
U.S. Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
(electronic copy only)



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

IN REPLY REFER TO:

GP-4100
LAW-5.10

May 15, 2012

RETURN RECEIPT REQUESTED

Mr. Justin D. Lavene
Assistant Attorney General
State of Nebraska
1445 K Street
Lincoln NE 68508-2731

Subject: Final Response to Your May 3, 2012, Touhy Request and Amended Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum in *Kansas v. Nebraska*, No. 126, Original

Dear Mr. Lavene:

On May 3, 2012, Department of the Interior Field Office Solicitor, Mr. John Chaffin, forwarded to the Bureau of Reclamation, Great Plains Region, an electronic copy of the State of Nebraska's supplemental *Amended Notice of Deposition of Mr. Marvin Swanda and Subpoena Duces Tecum and Touhy Request*.

The State of Nebraska served Mr. Swanda, by United States Postal Service - In Care Of, Mr. Chaffin, a Subpoena Duces Tecum on May 3 2012. Your letter states Mr. Swanda's deposition is scheduled for May 22, 2012, from 8:00 a.m. to 5:00 p.m., in the Nebraska Attorney General's Office, located at 1221 N. Street, Suite 601, Lincoln, Nebraska.

The scope of this Touhy Request is the same as your March 30, 2012, Touhy Request which you have incorporated by reference and which states: "The State of Nebraska respectfully requests that Mr. Marvin Swanda appear for deposition and provide the testimony, documents and information specified in Kansas' Touhy Request dated March 30, 2012, for use in the above -referenced litigation." You also documented: "On Motion, Nebraska requested leave to depose Mr. Swanda out of time, and that motion was granted by the Special Master by Order of April 26, 2012."

The State of Kansas' March 30, 2012, Touhy Request stated: "Mr. Swanda's testimony is not reasonably available from any other source. Mr. Swanda, as a former long-time Reclamation employee, possesses knowledge of the historical operations of the Reclamation projects in the Republican River Basin (RRB) that no other single person possesses. Mr. Swanda will be able to testify to facts of which he has personal knowledge during the period of his employment. Specifically, Mr. Swanda's testimony would consist of the following subjects if this Touhy Request is approved, each subject limited to the knowledge he gained during the time of his employment at Reclamation:

1. Documents of the initiation and operations of the RRB Reclamation projects.
2. Concerns of Reclamation regarding groundwater use above Reclamation projects and how those concerns were documented.



3. Concerns of Reclamation regarding Nebraska's Integrated Management Plans and how these concerns were documented."

I am granting your request for Mr. Swanda's testimony subject to the following limitations:

1. Mr. Swanda is authorized to provide testimony based on his personal knowledge, gained during the time of his employment at Reclamation and relating to:
 - a. Documents of the initiation and operations of the RRB Reclamation projects.
 - b. Document concerns of Reclamation regarding groundwater use above Reclamation projects based on his own personal experience.
 - c. Document concerns of Reclamation regarding Nebraska's Integrated Management Plans up to the time of his retirement from Reclamation which was December 31, 2010.
2. Mr. Swanda may offer lay opinions or inferences rationally based on Mr. Swanda's own perceptions and not based on scientific, technical, or other specialized knowledge within scope of Rule 702. Rule 701, FRE.
3. Mr. Swanda is not authorized to offer expert testimony including testimony in the form of opinion or otherwise based on scientific, technical, or other specialized knowledge related to his work for Reclamation.
4. Because he is not authorized to offer expert testimony, Mr. Swanda may not answer hypothetical questions based on information presented at or before the hearing or deposition, including facts not within his personal knowledge.
5. Mr. Swanda is not authorized to testify as to matters or actions of Reclamation arising after his separation from Reclamation.
6. Mr. Swanda is not authorized to testify to official policies of Reclamation or to any interpretations of law by Reclamation, the Office of the Solicitor or the Secretary of the Interior.

Mr. Swanda, as a former employee, does not possess any documents responsive to the Subpoena Duces Tecum.

We have advised Mr. Swanda of this approval, and the parameters of his authorization to testify.

In accordance with 43 C.F.R. § 2.85, you stated your willingness to pay the applicable fees associated with Mr. Swanda's testimony. Since Mr. Swanda is a retired employee, the costs associated with his travel and related expenses will need to be coordinated directly with him. FOIA regulations may be viewed at www.doi.gov.

Please feel free to contact Mr. Thompson via email at AThompson@usbr.gov, Donna Hirning at DHirning@usbr.gov, or John Chaffin at John.Chaffin@sol.doi.gov regarding this Touhy Request.

Sincerely,

/s/
Michael J. Ryan
Regional Director

cc: Mr. John Draper
Counsel of Record, State of Kansas
Montgomery and Andrews
Santa Fe, NM 87501

Mr. Marvin Swanda
c/o McCook Field Office (NK-410)
1706 West Third
McCook, NE 69001

Ms. Autumn Bernhard
Counsel of Record for the State Colorado
Assistant Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Mr. James J. DuBois
U.S. Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
(via electronic copy only)

bc: DOI – Office of the Solicitor
Attn: Mr. Matthew Parsons
(via electronic mail)

GP-1000, GP-1154, GP-4100 (Hirning), GP-4600 (Erger, Guentlner), GP-5600 (Chastain)
NK-100, NK-410

WBR:DHirning:lcampbell:5/14/12:406-247-7713: Control Number: 12028359
T:\Business Resources\3000 Correspondence\GP-3100\Hirning\Hirning 5-14-12 Final Response to Ne
Justin Lavene re Marv Swanda 5-22-12 Deposition and Testimony 5 14 12 H.docx



United States Department of the Interior

BUREAU OF RECLAMATION
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

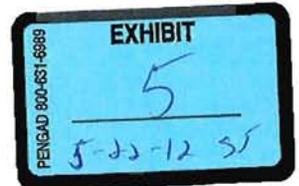
IN REPLY REFER TO:

GP-4100
LAW-5.10

May 15, 2012

RETURN RECEIPT REQUESTED

Mr. John B. Draper
Counsel for Kansas
Montgomery and Andrews
325 Paseo de Peralta
Santa Fe, NM 87501



Subject: Touhy Requests, Dated March 23, 2012, March 30, 2012, and April 1, 2012, Regarding Mr. Marvin Swanda's Deposition and Subpoena Duces Tecum; and the Amended Touhy Request for Mr. Aaron Thompson's Testimony in *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court

Dear Mr. Draper:

The Bureau of Reclamation, Great Plains Region, received your April 1, 2012, Touhy Request in which you provided the trial dates of August 8-31, 2012, for *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court. You also requested approval to work with the Nebraska Kansas Area Manager, Mr. Thompson, to finalize the proposed written testimony which will be submitted as his direct testimony at the trial.

Reclamation has reviewed your Touhy Requests including those dated March 23, 2012, and March 30, 2012. In addition, there has been extensive electronic communications between the States of Kansas and Nebraska Counsels of Record, with the Federal government's counsel (Mr. James DuBois Esq., and Mr. John Chaffin Esq.) and Mr. Thompson. The government counsel has actively demonstrated Reclamation's willingness to work with the States regarding *Kansas v. Nebraska & Colorado*, No. 126, Orig., U.S. Supreme Court, in order to meet the Summary of Deadlines, dated October 14, 2011.

Mr. Swanda, as a non-expert witness, will be able to testify to the facts of which he has personal knowledge during the period of his employment. I have enclosed a copy of the Touhy Request response dated April 6, 2012, regarding Mr. Swanda's Subpoena Duces Tecum that states the subjects and limitations of his testimony that he will be provided at the scheduled deposition on May 22, 2012, in Lincoln, Nebraska. These same limitations will apply to Mr. Swanda as a testifying witness if he is called, and any written testimony must also be within these limitations.

Reclamation is willing to work with the State of Kansas regarding both Mr. Thompson's and Mr. Swanda's written testimonies in order to assure that the proposed testimonies are consistent with the limitations of their Touhy Authorization. Reclamation will need to have the written testimony prepared no later than 30 work days prior to the deadline set by the Special Master in order to ensure adequate internal review is completed in time. In accordance with 43 CFR §2.85, and as you affirmed in your willingness to pay statement, the State of Kansas will pay all costs, including travel expenses for the employee to testify under the relevant substantive and procedural laws and regulations. Please note, payment regarding Mr. Swanda's travel and related fees must be coordinated directly with Mr. Swanda.

In closing, Reclamation will continue to work with you to ensure we are all in compliance with the applicable Code of Federal Regulations (43 CFR §§2.80 -- 2.90) which governs Touhy Requests.

Freedom of Information Act Regulations may be viewed at: www.doi.gov.

If you have any questions, please feel free to contact Mr. Thompson via email at AThompson@DOI.gov or at 308-389-5301, Donna Hirning at DHirning@usbr.gov or at 406-247-7713 or John Chaffin at John.Chaffin@sol.doi.gov or at 406-247-7058.

Sincerely,

/s/
Michael J. Ryan
Regional Director

Enclosure

cc: Mr. Justin D. Lavene
Assistant Attorney General
State of Nebraska
1445 K Street
Lincoln NE 68508-2731

Mr. Marvin Swanda
c/o McCook Field Office (NK-410)
1706 West Third
McCook, NE 69001

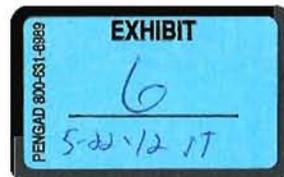
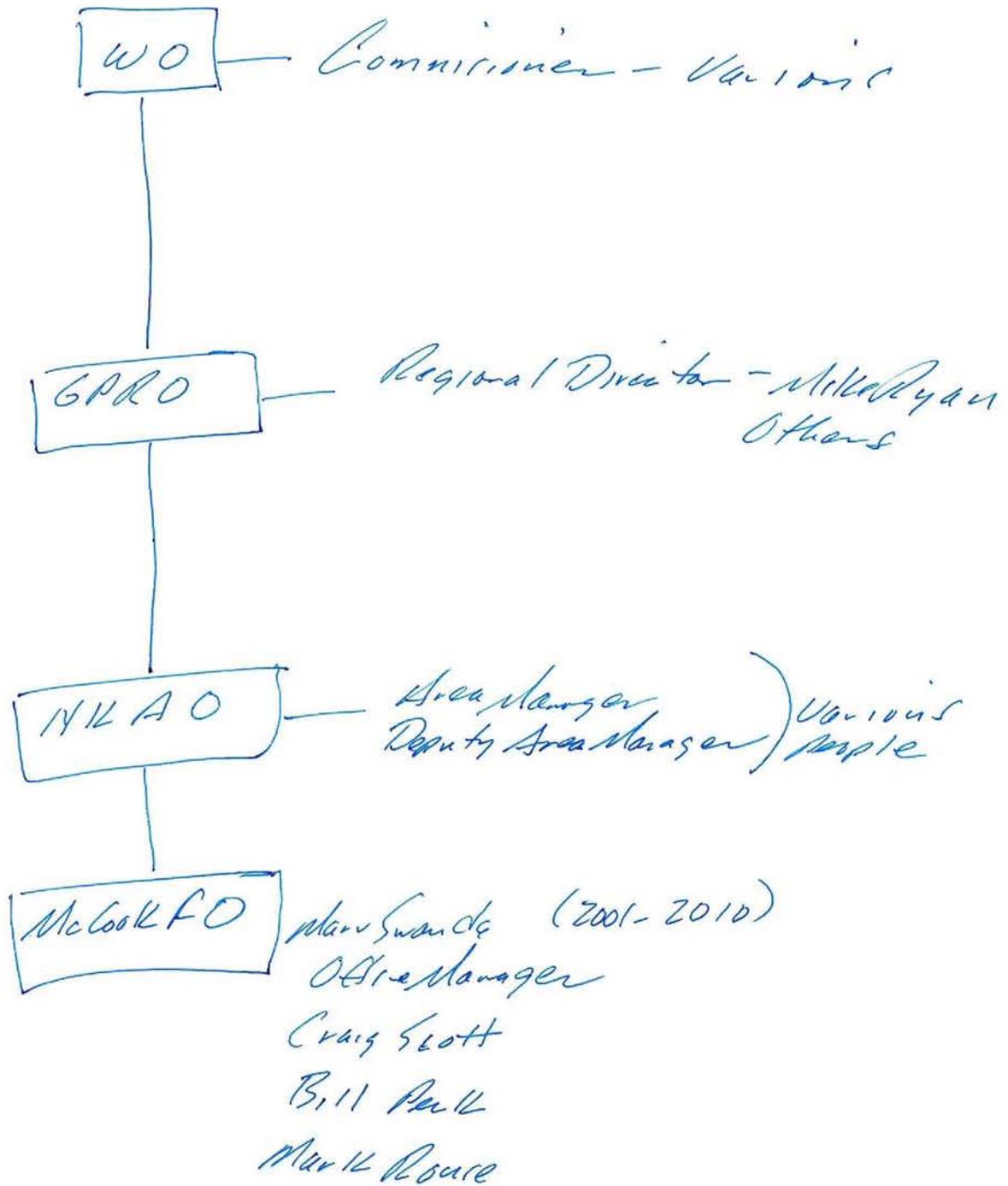
Ms. Autumn Bernhard
Counsel of Record for the State of Colorado
Assistant Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Mr. James J. DuBois
U.S. Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
(via electronic mail only)

bc: DOI – Office of the Solicitor
Attn: Mr. Matthew Parsons
(via electronic mail)

GP-1000, GP-1154, GP-4600 (Erger, Guenther), GP-5600 (Chastain),
NK-100, NK-200, NK-410 (Scott)
(w/ enclosure to ea)

WBR:DHirning:lcampbell::5/14/2012:406-247-7713: Control Numbers: 12018780, 12020563, 12020229
T:\Business Resources\3000 Correspondence\GP-3100\Hirning\Hirning 5-14-12 Final Response to Mr
Draper March and April Touhy Requests re Mrs Thompson and Swanda depositions and test 5 14 12 H.docx



From: Marvin Swanda
To: Stephen Ronshaugen
Subject: Fwd: Re: Briefing Paper on RR Compact Lawsuit Settlement
Date: Friday, December 09, 2011 10:50:38 PM
Attachments: RR Compact Lawsuit Settlement draft 3-21-07GA.doc

>>> Gordon Aycock 3/22/2007 2:28:36 PM >>>
Judy attached is a revised copy of the brief with my changes and additions. Hope this helps.

Gordon Aycock
Great Plains Regional Office
P.O. Box 36900, GP-4600
Billings, MT 59107
Voice: 406.247.7756
Fax: 406.247.7793



BUREAU OF RECLAMATION

BRIEFING FOR: Commissioner Robert W. Johnson **DATE:** March 21, 2007

PUPOSE OF PAPER: Republican River Compact Lawsuit Settlement Implementation

CURRENT STATUS: In an effort to achieve compliance with the Republican River Compact Settlement, the State of Nebraska enacted LB 962 in 2004 which requires the Department of Natural Resources (DNR) and the Natural Resource Districts (NRD) to develop an integrated surface water/ground water management plan for fully appropriated basins, which includes the Republican River basin. The goal of this management plan is to "...sustain a balance between water uses and water supplies . . . for both the near term and long term." The law requires that the "...ground water and surface water controls and rules and regulations in the plan . . . ensure that the state will remain in compliance with applicable interstate water compacts, decrees or other formal agreements, and protect existing surface water users and ground water whose wells are dependent on recharge from the river or stream."

Current concerns of the DNR and Republican River NRD:

- Nebraska's overuse of the Compact allocation was 42,000 acre-feet in 2005 and this annual overuse is increasing is increasing 7,500 acre-feet/year;
- Groundwater pumping is responsible for over 80 % of the depletions to stream flow that are counted in the Republican River Compact and this impact is growing;
- % The percentage of depletions due to groundwater pumping has been increasing 1% per year significantly depleting surface flows(at this rate surface water use will approach zero within 20 years);
- Need for Develop more efficient ways to use our surface water reservoirs and canals— the most immediate fastest-way to reduce overusestream depletions is to reduce the use of surface water including and reduce reservoir evaporation (basis for DNR attempting to lease surface water on temporary basis).

One of the primary interests of the NRD is safeguarding the future of groundwater irrigation. The NRD are interested in pursuing agreements with irrigation districts that aid in achieving and sustaining Compact compliance. Concepts that are being considered are the permanent retirement of project (surface) irrigated lands; elimination of irrigation by canal system/reservoir systems within existing projects; reformulation of projects; dissolution of irrigation districts; etc.

BACKGROUND: Under the terms of the Republican River Compact Settlement Stipulation, dated December 15, 2002, all Compact accounting is performed using a five-year running average. The first five-year running average period is 2003-2007. Nebraska has until the end of 2007 to come into Compact compliance. Preliminary accounting indicates that the State of Nebraska will have overused its share of the Republican River by about 200,000 acre-feet for the first five-year accounting period of 2003 through 2007. Even with drastic measures to reduce consumptive use it will not be possible for Nebraska to be in compliance with the Compact before the end of 2007.

POSITION OF INTERESTED PARTIES: Both Nebraska and Colorado have significantly overused their Compact allocations and are looking at drastic measures to reduce their consumptive use. Kansas has received far less than their Compact allocations for the last four

years and believes that Colorado and Nebraska need to either come into compliance or pay damages. Reclamation projects are water short and this shortage is growing. Reclamation believes project viability must be maintained.

RECOMMENDATION: Reclamation should make every effort to protect project water supplies, however, if our water users are willing to forgo water in exchange for payment by the states we should work with them and the states on solutions that are amendable to all parties.

PREPARED BY: (name, office, phone #)Michael J. Ryan, Regional Director, GPRO, 406-247-7600

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From: [Marvin Swanda](#)
To: [Craig Scott](#); [William Peck](#)
Subject: Fwd: Revised Karl Wirkus Briefing
Date: Friday, December 09, 2011 10:56:58 PM
Attachments: [Republican River Inflow Comparisons-F.ppt](#)
[Percentage of Normal PrecipitationD.xls](#)
[KarlWirkusBriefingTimelineC.doc](#)
[FinalDraftKarlWirkusBriefing5302008A.doc](#)
[All NRD wells vs All InflowsB.xls](#)

Consider confidential.

>>> Kimberley Parish 6/3/2008 2:08:31 PM >>>
Todd/Rae,

The attached BP for Protection of Surface Water Interest in the Republican River Basin has been reviewed and approved by GPRO. Please deliver to Karl Wirkus.

Thanks,
Kim P
Acting for Rae Olsen



BUREAU OF RECLAMATION**BRIEFING FOR:** Karl Wirkus, Deputy Commissioner Operations **DATE:** May 30, 2008**PURPOSE OF PAPER:** Protection of surface water interests in the Republican River basin – Nebraska (NE) and Colorado (CO)

CURRENT STATUS: Both NE and CO have been attempting to achieve Republican River Compact (Compact) compliance without significant reductions in groundwater pumping. Because of the amount of groundwater irrigated acres in the basin, protection of groundwater irrigation has become a “social issue,” that being the economy of the basin. There is approximately 1.7 million acres of groundwater irrigation in NE and CO compared to about 120,000 acres of surface water irrigation. Legislation was introduced in NE and CO this year that in effect would have diminished surface water rights to allow additional protection for and continuation of current levels of groundwater pumping. The introduced legislation met with significant, unexpected opposition which resulted in the legislation being withdrawn or indefinitely postponed. It is our understanding that the NE legislation will be redrafted and introduced during the 2009 legislative session.

Reclamation is concerned that our projects are water short. Inflows to the federal reservoirs in the Republican River basin has declined from over 600,000 acre-feet per year average in the 1960’s to nearly 151,000 acre-feet per year average for the period 2003 through 2007 (see attached table). The reduced inflow is not a result of long term declines in precipitation, which is virtually normal from the 1960’s to the present time (see attached graph). During this same period the number of irrigation wells in the Republican River basin in NE and CO has increased from approximately 6,000 in 1965 to over 16,000 in 2001. Several irrigation districts have been unable to deliver water to all or portions of their districts since 2003. Our main concern is not the reduced inflow due to drought; it is the long term decline in base flow because of groundwater pumping that is devastating to our projects. Recreation, fish and wildlife benefits and resulting revenues to managing partners have significantly declined due to minimum reservoir levels and little or no inflows. The viability of the irrigation districts and continuation of agreements with managing partners is a major concern. In response to the drought and historic low inflows in 2002 and 2003, Reclamation supported legislation that was enacted that provided financial relief to four of our irrigation districts by rescheduling their repayment obligations. However, this repayment rescheduling is not a permanent solution to the water scarcity facing these districts.

In December, 2007 Kansas (KS) gave NE notice of proposed remedies to address violations of the Supreme Court Decree, which if not agreed to by NE in 45 days (NE did not), KS would submit the dispute to the Republican River Compact Administration (RRCA) as a “fast track” issue and proceed to Final Settlement Stipulation (FSS) Dispute Resolution procedure (see attached timeline). The KS remedy notice to NE was based on NE non-compliance with the two-year Water Short Year accounting requirements of the FSS for NE that ended in 2006. CO is not subject to this two year accounting. NE and CO will both be in violation of the Supreme Court Decree when the first five year accounting is finalized for years 2003 through 2007. All three states have now submitted issues to the RRCA and are now engaged in “fast track” Dispute Resolution procedures.

To date CO’s Compact compliance activities include: (1) Plans for an augmentation pipeline. In 2008 ground water rights were purchased that will produce nearly 15,000 acre-feet annually. The pipeline project as designed will deliver this water to the North Fork of the Republican River at the CO-NE state line. CO has submitted their pipeline proposal to the RRCA as a “fast-track” issue to protect the interests of CO water users and to address the issue in a timely manner. (2) Order to Release Water – In 2007 the State Engineer ordered Reclamation to immediately begin release of water stored out-of-priority from Bonny Reservoir.

NE Department of Natural Resources (DNR) and the Natural Resources Districts (NRD) have developed and formally adopted integrated water resources management plans. Reclamation provided testimony at the hearings held during the development of these plans detailing our concerns that the plans: would not sustain a balance between water uses and supplies; stream flows will continue to decline; and with the exception of wet periods, the plans will not result in NE achieving Compact compliance. Beginning in 2006 the DNR and/or NRDs have annually purchased or leased surface water from irrigation districts to aid the state in achieving Compact compliance. In 2007 NE enacted legislation granting the Republican River NRD's taxing authority on all real estate in the Republican River basin to fund surface water purchases. This taxing authority was challenged in District Court which recently ruled this taxing authority "unconstitutional." The NE Attorney General's Office has bypassed the Court of Appeals and filed an appeal directly with the NE Supreme Court in an effort to expedite the case. If the case is accepted by the Supreme Court, it is expected that it could be at least a year before a ruling is made. During the interim the NRD's funding and ability to issue bonds to purchase or lease surface water is limited to a \$10/acre "occupation tax" on all irrigated lands in the basin. The Attorney General's Office is interested in pursuing a long term agreement for the purchase or lease of surface water from Reclamation projects to aid future Compact compliance by NE. NE is currently developing plans for groundwater augmentation that satisfy the requirements laid out in the FSS, with a targeted timeframe for completion of summer, 2009. At that time an application would be presented to the RRCA for approval.

POSITION OF INTERESTED PARTIES:

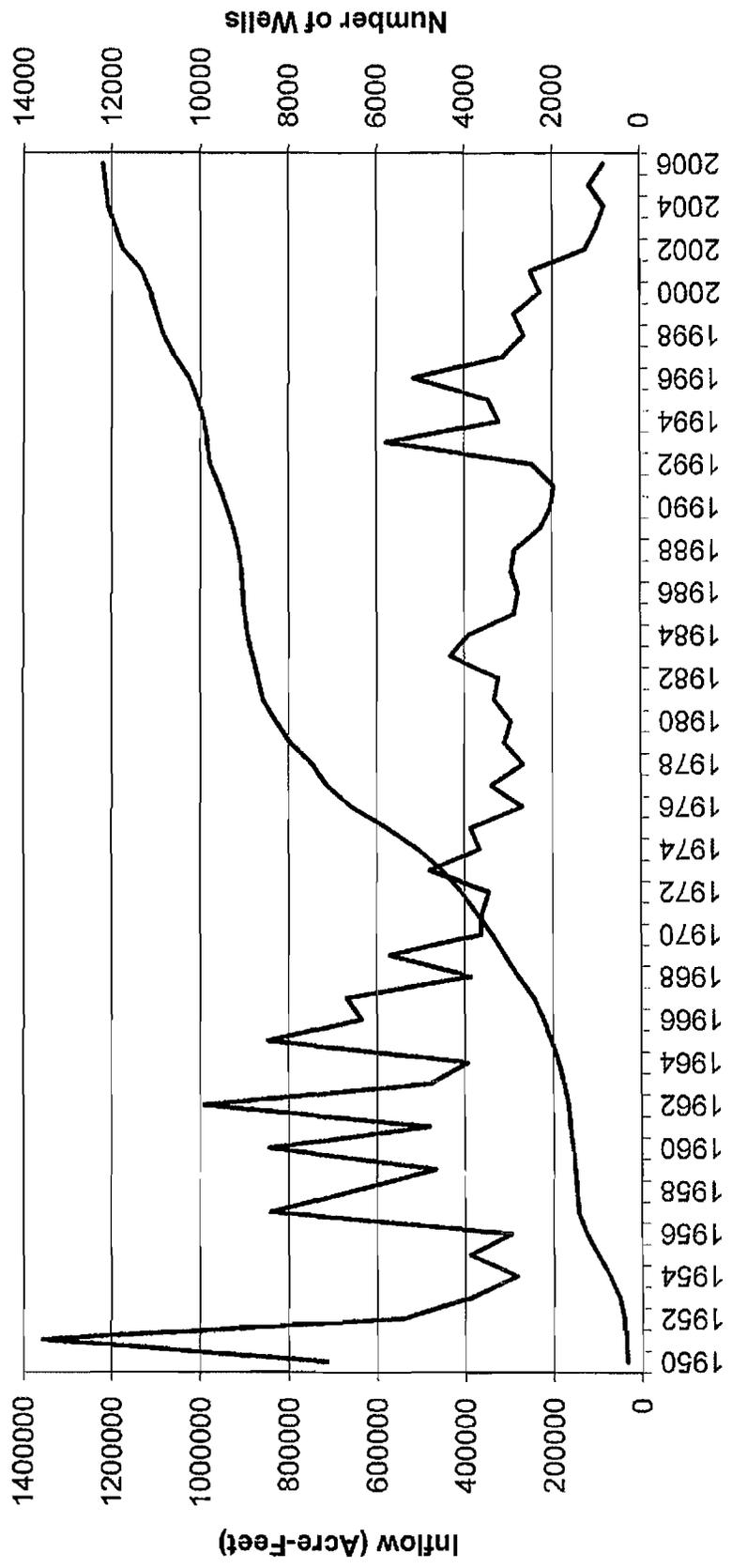
KS is demanding that they receive their full Compact allocation of water as provided in the Supreme Court Decree. CO is attempting to achieve Compact compliance with: minimum reductions in groundwater pumping; reduction or elimination of evaporation and consumptive use from seepage from Bonny Reservoir; and installation of augmentation wells and pipeline. NE is attempting to achieve Compact compliance with: minimum reductions in groundwater pumping; long term purchase or lease of surface water; and future augmentation of stream flows by groundwater withdrawal from augmentation wells.

RECOMMENDATION:

1. Reclamation should continue its efforts to collaborate with the three states as they seek compliance with the Republican River Compact. In doing so, Reclamation must take care to protect the public interests in the federal water projects and the interests of these federal project beneficiaries. Toward that end, Reclamation is concerned that the "augmentation wells and pipelines" proposed for Compact compliance may further diminish surface water supplies to federal projects. Conceptually, an augmentation pipeline could allow the continuation of pumping to the extinction of river base flow. Reclamation must analyze the augmentation proposals and present our comments to the Republican River Compact Administration.
2. Reclamation is concerned that entering into a long term purchase or lease agreement with the State of NE (DNR, NRDs) to provide surface water for Compact compliance may result in continued depletions within the Republican River basin by enabling the continuation of groundwater pumping at non-sustainable levels. Environmental documents prepared to accompany any long term water purchase or lease agreements should be of sufficient scope and rigor to analyze the groundwater/surface water connectivity and potential impacts.
3. Reclamation needs to be prepared to provide written comments to the Department of Natural Resources for NE and/or CO detailing our concerns regarding any introduced legislation that would reduce or diminish project (surface) water rights held by the United States and/or the irrigation districts.

PREPARED BY: Mike Ryan, Regional Director, (406) 247-7600

Total Inflow Into Federal Reservoirs and Well Development Republican River Basin in Nebraska



SOURCE: DNR,
USBR

Date

— INFLOW (All Reservoirs) — IRRIGATION WELLS

RECLAMATION
Managing Water in the West

From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#)
Subject: RE: Commissioner's Briefing on Republican River
Date: Thursday, May 28, 2009 2:18:27 PM
Attachments: [RepublicanRCompactNeKs\(Comm\)2009_05.doc](#)

From: Scott, Craig D
Sent: Thursday, May 28, 2009 10:06 AM
To: Swanda, Marvin R
Subject: RE: Commissioner's Briefing on Republican River

Accounting for 2007 was not finalized because of the disputes over the accounting procedures (HCL evap split, non-federal evap below HCL). The states agreed to exchange data but not finalize the accounting. If all disputes are agreed upon, accounting for 2008 would not be finalized until Aug 2009.. Arbitration was initiated following the water short years 2005 and 2006.

Craig

From: Swanda, Marvin R
Sent: Thursday, May 28, 2009 7:46 AM
To: Scott, Craig D
Cc: Koenig, Carl W
Subject: FW: Commissioner's Briefing on Republican River

From: Thompson, Aaron M
Sent: Wednesday, May 27, 2009 4:24 PM
To: Swanda, Marvin R
Cc: Esplin, Brent
Subject: FW: Commissioner's Briefing on Republican River

Marv, please see the comments below and see if you or Craig can incorporate them.

From: Petersen, Lois Ann
Sent: Wednesday, May 27, 2009 4:07 PM
To: Esplin, Brent; Thompson, Aaron M
Cc: Reichert, Thelene (Tami)
Subject: Commissioner's Briefing on Republican River

M. Ryan has some questions plus some suggestions on this one:

Current status mentions 2005 & 2006; what about 2007 and 2008?

The Position of Interested Parties - What are NE, KS, and/or CO's position?

Can part of the Background point be deleted? (or at least condensed-Ann's thought)

He also wanted to see these points:

- Compact allocates water
- Federal project designed on the foundation of state compliance
- Groundwater development exploded, especially in Nebraska...Colorado to a lesser extent.
- Kansas gets groundwater included in the accounting (FSS)
- Nebraska & Colorado not in compliance
- Groundwater "economics" make compliance solution politically untenable



Mike is going to giving this briefing paper to Commissioner Connor for a powerpoint presentation we hopefully have time to give him while he's in Colorado for the Western Water Law conference. He'll be back in the office on Monday, so if I could have a revised briefing paper by Friday afternoon?

Thanks,

L. Ann Petersen
Special Assistant
Great Plains Regional Office
406-247-7608

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](#)

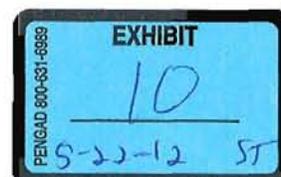
I think this is the latest.

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



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

From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#)
Subject: FW: Nebraska NRD Requests meeting with Comm
Date: Friday, March 05, 2010 3:04:31 PM
Attachments: [RepublicanCompactNeKs\(05 Mar '10\).docx](#)

From: Esplin, Brent
Sent: Friday, March 05, 2010 3:58 PM
To: Petersen, Lois Ann
Cc: Reichert, Thelene (Tami); Thompson, Aaron M; Swanda, Marvin R
Subject: RE: Nebraska NRD Requests meeting with Comm

Ann: An updated briefing paper is attached. Will you please make sure we receive a copy of any meetings notes in short order. We will be preparing to provide Reclamation's perspective on this issue in a 18 Mar 2010 meeting at the invitation of the Nebraska DNR. It will be useful to have feedback from the DC office if this meeting happens so we can make sure we are on the same page.

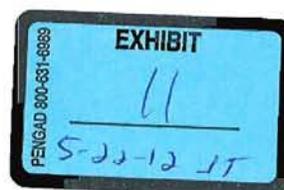
-Brent

From: Petersen, Lois Ann
Sent: Friday, March 05, 2010 2:44 PM
To: Thompson, Aaron M; Esplin, Brent
Cc: Reichert, Thelene (Tami)
Subject: Nebraska NRD Requests meeting with Comm

The Nebraska NRD (Kris Polly's client) wants a meeting next week with the Commissioner's office. Did I grab the correct briefing? And are we good with it? I'll need any revisions pretty quick as we're not sure exactly when next week it will be scheduled.

Thanks,

L. Ann Petersen
Special Assistant
Great Plains Regional Office
406-247-7608



BUREAU OF RECLAMATION**BRIEFING FOR:** Commissioner Michael Connor**DATE:** March 05, 2010**ISSUE:** Republican River Compact (Compact) – Nebraska Compact Compliance Plan

CURRENT STATUS: The Nebraska Department of Natural Resources has developed three options for the local Natural Resources Districts (NRDs). They include curtailing surface water use and bypassing inflows through Reclamation reservoirs to store water in Harlan County Lake in order to ensure compliance during “water short” years. The Frenchman Cambridge and Bostwick Irrigation Districts are concerned these plans fail to protect their water rights and fear if these plans are adopted they will not be able to remain financially viable. Reclamation has prepared formal legal questions for the Solicitor’s Office regarding the administration of the project water rights and associated existing contractual obligations. A stakeholders meeting has been scheduled by DNR on March 18, 2010, including the NRDs and the surface water users in the basin.

BACKGROUND: Nebraska remains out of compliance with the Compact, which is a three state compact between NE-CO-KS, on the Republican River. In accordance with a Final Settlement Stipulation for non-binding arbitration, an arbitrator rejected Nebraska’s position that the current Integrated Management Plans (IMPs) were adequate to maintain Compact compliance during “water short” years. It was recommended additional reductions in groundwater allocations be made and that Nebraska secure long term access to surface water rights in June 2009. The Arbitrator made 12 recommendations in his Final Decision. With the exception of one minor groundwater accounting change, the states rejected all of the Arbitrator’s recommendations that were not favorable to their position. Reclamation testified at the Arbitration hearing that the groundwater pumping allocations in the IMPs should be reduced significantly to ensure long-term Compact compliance and to improve surface water supplies. Without reductions in the groundwater allocations, surface water supplies will not be consistently available. The protection of groundwater irrigation at the expense of surface water irrigation has become a “social economic issue” in Nebraska to safeguard the future of their local economy.

POSITION OF INTERESTED PARTIES: Nebraska believes these new plans will allow them to be in Compact compliance in all years. Due to the potential curtailment of surface water use, the Irrigation Districts and Reclamation are concerned that if these plans are adopted the Irrigation Districts will not be able to remain financially viable.

RECOMMENDATION: The stated goals and objective of the IMPs are: “sustaining a balance between water uses and water supplies”. Most of the senior water rights in the basin are the surface water rights that are currently not being provided “equity among water users”. Reclamation should continue to collaborate with Nebraska as they seek compliance with the Compact. In doing so, Reclamation should continue to insist that the states involved in the Compact work on long-term solutions that reduce the groundwater depletions and restore stream flows to ensure Compact compliance. Effort should also be made to protect the federal investment and the project beneficiaries in the Republican River Basin. Reclamation should collaborate with the Solicitor’s Office to better understand its legal right and obligation to operate its projects should these plans be adopted.

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

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.

Marvin R. Swanda, P.E.
Office Manager
McCook Field Office
1706 W. Third St.
McCook, NE 69001

Phone: 308-345-1027
Cell: 308-340-1027
mswanda@usbr.gov



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.

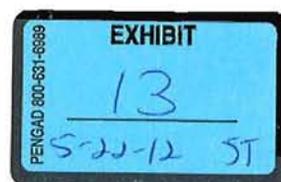
PREPARED BY: Michael J. Ryan, Regional Director, Great Plains Region, (406) 247-7600

From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#)
Subject: FW: Republican River Briefing Paper
Date: Monday, November 15, 2010 10:15:23 AM
Attachments: [RepublicanRCompactNeKs\(RRIDsComm\)Nov15.docx](#)

From: Esplin, Brent
Sent: Monday, November 15, 2010 10:58 AM
To: Radzykewycz, Karen L
Cc: Thompson, Aaron M; Swanda, Marvin R
Subject: Republican River Briefing Paper

See attached briefing paper for tomorrow's meeting between the Commissioner and the Republican River Irrigation Districts.

-Brent



BUREAU OF RECLAMATION**BRIEFING FOR:** Commissioner Michael L. Connor**DATE:** November 15, 2010**ISSUE: Republican River Compact (Compact) – Video Conference with Frenchman Cambridge and Nebraska Bostwick Irrigation Districts (District)**

CURRENT STATUS: The Nebraska Department of Natural Resources (DNR) and local Natural Resources Districts (NRDs) have recently revised two of the three Integrated Management Plans (IMPs). The stated goals and objectives of the IMPs are: "...sustaining a balance between water uses and water supplies." Most of the senior water rights in the Republican River basin are surface water rights which are currently not being provided "equity among water users." They revised IMPs include curtailing surface water use and bypassing inflows through the federal reservoirs in order to ensure Compact compliance during water short years. The Frenchman Cambridge and Bostwick Irrigation Districts are concerned the IMPs fail to protect their water rights and are concerned about their long term viability. Reclamation provided testimony on the two revised IMPs in May 2010 and have been collaborating with the Lower Republican NRD as it prepares revisions to its IMP. Reclamation has also met and exchanged correspondence with DNR in an attempt to better understand how the IMPs will be administered and how the federal projects will be impacted.

BACKGROUND: Nebraska remains out of compliance with the Republican River Compact (Compact) between Nebraska, Colorado and Kansas. In accordance with a Final Settlement Stipulation (FSS) for non-binding arbitration, an arbitrator rejected Nebraska's position that the current Integrated Management Plans (IMPs) were adequate to maintain Compact compliance during water short years. The FSS recommended that additional reductions in groundwater allocations be made and that Nebraska secure long-term access to surface water rights by June 2009. Reclamation testified at the Arbitration hearing that the groundwater pumping allocations in the IMPs should be reduced significantly to ensure long-term Compact compliance and to improve surface water supplies. Without reductions in the groundwater allocations, surface water supplies will not be consistently available. The protection of groundwater irrigation at the expense of surface water irrigation has become a socio-economic issue in Nebraska--safeguarding the future of their local economy.

POSITION OF INTERESTED PARTIES: Nebraska believes the revised IMPs will allow them to be in Compact compliance in all years. Due to the potential curtailment of surface water use, the Districts and Reclamation are concerned that these plans as will negatively affect the Districts financial viability. The Districts believe that if surface water is curtailed and inflows are bypassed the value of Reclamation's storage rights and storage use rights will be diminished. The Districts also feel Reclamation should continue to be a strong partner to ensure the protection of the Districts and federal projects.

RECOMMENDATION: Reclamation should continue to collaborate with Nebraska as it seeks compliance with the Compact. In doing so, Reclamation should continue to insist Nebraska work on long-term solutions that reduce the groundwater depletions and restore stream flows to ensure Compact compliance. Effort should also be made to protect the Federal investment and the project beneficiaries in the Republican River Basin. Reclamation should continue to collaborate with the DNR, NRDs and Districts to protect and operate its projects.

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

From: [Swanda, Marvin R](#)
To: [Thomson, Aaron M](#)
Cc: [Esplin, Brent](#); [Scott, Craig D](#)
Subject: FW: Hill Visits - Need Schedule
Date: Monday, June 01, 2009 10:05:54 AM
Attachments: [QA for Ryan \(27.8 KB\).msg](#)
Importance: High

Aaron

Here are the Q&A that we put together as requested.

Let me know if anything else is required.

Marv

From: Esplin, Brent
Sent: Friday, May 29, 2009 2:50 PM
To: Swanda, Marvin R; Kube, Michael D
Cc: Thompson, Aaron M
Subject: FW: Hill Visits - Need Schedule
Importance: High

And the fun continues ...

See message below. We need to prepare a few Q&A's for the RD as part of his preparation for his scheduled Hill visits in June.

I believe our "hot topics" align with a most recent flurry of briefing papers, which are Republican River Compact and Bonny Reservoir. I'm not familiar with any real hot issues. However, if you can think of any, please draft a potential question and short answer. The recent discussion of reduced services at the state recreation areas in Nebraska could qualify.

I'll be out on Monday. These are due to the Region by noon on Monday, which is a pretty short turn around.

-Brent

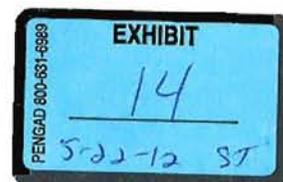
From: Davies, Steve On Behalf Of Petersen, Lois Ann
Sent: Friday, May 29, 2009 2:06 PM
To: Breitzman, Dennis E; Gere, Gregory S; Collins, Michael (Mike) P; McKeral, Cathleen J (CJ); Jewell, Daniel (Dan) E; Sawatzke, Thomas (Tom) G; Thompson, Aaron M; Esplin, Brent; Trevino, Mark A; Allard, James; Lawson, John H; Myler, Lyle D
Cc: Birdwell, Sabina; Buchholz, Marcia L; Campbell, Gary W; Soucy, John F; Ryan, Michael J; Petersen, Lois Ann; Olsen, Margaret R (Rae)
Subject: FW: Hill Visits - Need Schedule
Importance: High

Hi to all: Please see the attached tentative schedule for Mike Ryan's upcoming Hill appointments June 9-11.

In preparation of these meetings Mike would like each Area Office to prepare a list of potential questions along with answers on your respective "hot topics". Mike's only day in the office next week will be Tuesday June 2, so please send these to Ann Peterson by 12 noon Monday June 1.

Thanks, and remember that I am the messenger!

Steve Davies



Acting Special Assistant
Great Plains Regional Office
406-247-7608

From: Olsen, Margaret R (Rae)
Sent: Friday, May 29, 2009 10:45 AM
To: Davies, Steve
Subject: RE: Hill Visits - Need Schedule
Importance: High

This is the current schedule - there will be some tweaks. I am still not sure that all these members will be there - that would be unusual - but for now, here it is.

From: Davies, Steve
Sent: Friday, May 29, 2009 11:26 AM
To: Olsen, Margaret R (Rae)
Subject: Hill Visits - Need Schedule

Rae - Gary and Mike would like the schedule for the upcoming Hill visits ASAP. Mike is only going to be in the office on Tuesday next week so they are clearing time to go over briefings, etc.

talk soon, Steve

**Q&A's for Mike Ryan
Hill Visit
June 9-11, 2009**

Republican River Compact Issues and Bonny Reservoir

1. What is Reclamation's role in the Compact?

Reclamation has 7 dams and reservoirs (COE has 2) and associated distribution systems that provide water to 6 irrigation districts and one municipality. Reclamation played a major role in the studies that were conducted in the late 1940's to assess the water supply of the basin. Based on these studies conducted with the States the waters of the basin were allocated per the 1943 RR Compact. Our projects were designed to fit into each within each states share of the Compact allocations and not cause a non-compliance issue with any state. The federal projects are an integral part of the basin and Compact. The operation of the projects has a major affect in the accounting and compliance of the individual states.

2. Is Reclamation doing everything it can to help resolve the current RR Compact Issues?

Reclamation has been actively participating in all meetings that involve the States when possible. We have made it known to the State Engineers that we will work with all three states on the issues and provide any assistance within our authorities and policies.

3. What is Reclamation's position on the viability of its projects?

The federal projects have been experiencing significant water supply shortages. The shortages are more severe for several of the projects in the upper basin. We believe that there is a strong correlation to the groundwater use by the states especially NE and CO. We believe that the groundwater use is depleting the streamflow to the extent that the baseflows have declined significantly and in some cases almost 90-100% depletion of inflows has occurred. We have indicated this in our testimony on the NRD/DNR's Integrated Management Plans and in other forums.

We continue to support the projects and their viability.

4. Why did Reclamation testify at the recent Arbitration Hearings?

Reclamation was requested thru a Toughey request from Kansas to supply testimony relative to the federal projects. We provided testimony related to the current Reclamation policies and the historic operations of the federal projects and the water supply of the basin. This was supported by the Secretary.

5. What are the issues concerning Bonny Reservoir and the State of Colorado?

Colorado has overused their share of the Compact allocation by an average of 11,000 since 2003. Currently, the CO does not have rules/regulations in place that will curtail the groundwater use in the basin. To safeguard the future of groundwater irrigation, the state is moving forward on an augmentation pipeline that would offset some of their overuse due of the area in the short term . It is unclear on what the state will do for their long term solution but appears limited to the curtailment of groundwater use.

The state has also indicated that it wants to drain Bonny Reservoir which is located on the S. Fork of the Republican. They believe that this will offset most of the overuse on that sub-basin and help meet the sub-basin test that is impacting the State of KS. Reclamation has been ordered by the State Engineer to release water stored "out of priority" from Bonny. Little of the water released from Bonny has reached the Compact gaging station to offset CO's overuse in the South Fork sub-basin We do not believe that this will alleviate the overuse in the long term without a significant curtailment in pumping.

6. How has the Federal projects been impacted in the basin by the overuse of NE and CO?

The overuse has caused streamflow depletions throughout the basin. This has resulted in short water supplies as it relates to natural flows and storage in the federal reservoirs. The shortage has dramatically affected our irrigation districts in their viability as well as the benefits related to recreation and fish/wildlife at the reservoirs.

From: [Swanda, Marvin R](#)
To: [Wernin, Jack B](#); [Scott, Craig D](#); [Peck, William E](#)
Subject: FW: Conservation Study - Terraced land info.
Date: Monday, April 13, 2009 9:17:50 AM
Attachments: [Appendix F - KSU.pdf](#)
[RRCA 4th Annual Status Rot Jul312008.DOC](#)

From: Guenther, R S (Scott)
Sent: Monday, April 13, 2009 9:50 AM
To: Swanda, Marvin R
Cc: Aycocock, Gordon L; Erger, Patrick J
Subject: Conservation Study - Terraced land info.

Marv: I have attached the main body of the Conservation Committee 4th Annual Status Report from Aug 2008 and Appendix F of that report which is Jim Koelicker's summary of work up until Aug 2008. This is where the information was pulled from I provided to Gordon and you for the deposition.

You might want to look at Pg 14 of the main report for the discussion of the work on Prairie Dog Cr, and at the Appendix F, Table 2 and Table 4. The preliminary work on Prairie Dog Cr reflects the impact of terraces on 141,300 acres of land by reduction in streamflow of 3,200 acre-feet. We had estimated that if Prairie Dog Cr was representative of the basin in Nebraska, which has 1,200,000 acres of terraces, than there was a potential reduction in streamflow from terraces of about 27,000 af <- for terraces in Nebraska only. We need to continue to stress that this information from the Conservation study is very preliminary and the results from the study will not be available until they are reported to the RRCA in August 2009.

It may also be important to know that there are 2,309,559 (2.3 million) acres of terraced land in the basin above Hardy, 220,000 in Colo., 890,000 in Kansas, and 1,196,000 in Neb (pg 8 of report).

I believe the estimated impact of terraces of 175,000 af referenced in the S&T proposal came from the Republican River basin Water Management Study, 1985. The study lumped together ponds, terraces and crop residue management - those impacts totalled 238,200 af. I believe we backed out the crop residue management amount to get to the 175,000 af referenced in the proposal. I would need to go through the engineering appendix of that report to confirm this. Let me know if we need to do this.

Please call if you have any questions.

scott



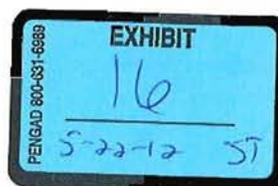
From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#); [Avcock, Gordon L](#)
Cc: [Thompson, Aaron M](#)
Subject: Re: URNRD IMP HearingTestimony June 10 2010 DRAFT June 2
Date: Wednesday, June 02, 2010 2:32:22 PM

On having a share for sw the thinking was an equal amount like gw gets. This would in affect reduce what gw could take and set the bar for equity for all users. Agin it is not what is leftfor sw but what we need just like the gw users. Maybe more explanation for mike would help and more definition in our writeup.

From: Scott, Craig D
To: Aycocck, Gordon L; Swanda, Marvin R
Cc: Thompson, Aaron M
Sent: Wed Jun 02 14:11:53 2010
Subject: URNRD IMP HearingTestimony June 10 2010 DRAFT June 2

Gordon, attached is latest draft incorporating comments in Aaron's email. One other point we wanted to get across was that "...groundwater was stealing our water" ... in a polite way. I added the follwing statement to capture this message: Ground water pumping and other upstream uses are progressively depleting reservoir inflow. Without additional limits on ground water pumpers irrigation deliveries and other important project benefits will continue decline. The IMP should recognize and protect the investment of the United States taxpayers made decades ago.

Craig



From: Swanda, Marvin R
To: Aycock, Gordon L; Scott, Craig D; Thompson, Aaron M
Cc: Esplin, Brent
Subject: Re: Republican River
Date: Wednesday, October 27, 2010 8:53:17 AM



I think we had put notes together that captured the main points.

From: Aycock, Gordon L
To: Scott, Craig D; Thompson, Aaron M
Cc: Swanda, Marvin R; Esplin, Brent
Sent: Wed Oct 27 08:50:46 2010
Subject: RE: Republican River

Craig did a good job with the timeline. The only thing I can see that we may want to do is expand some on what took place at the July 30th meeting but this probably isn't needed at this point.

Gordon L. Aycock
Technical Specialist
Reservoir Operations & Water Rights
Bureau of Reclamation
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

Phone: 406-247-7756

From: Scott, Craig D
Sent: Tuesday, October 26, 2010 5:41 PM
To: Thompson, Aaron M
Cc: Swanda, Marvin R; Esplin, Brent; Aycock, Gordon L
Subject: RE: Republican River

Attached as you requested, are recent correspondence between Reclamation and NE DNR regarding the recently adopted IMPs, a copy of Reclamation's testimony provided at the URNRD hearing on June 10, 2010, and copy of the editorial from Dan Smith, Manager, Middle Republican River NRD, dated Oct. 19, 2010. Below is a timeline of our efforts to understand the IMPs along with additional points that could be used in our response to Gov. Heineman's letter to Commissioner Connor.

TIMELINE:

- On June 30, 2009, Arbitrator Dreher rejected Nebraska position that the current IMPs were adequate to ensure Compact compliance during critical dry periods
- Beginning in late 2009, in response to the Arbitrator Decision, Nebraska began developing revisions to their IMPs to adopt controls that would ensure compliance during critical water short years
- On May 26, 2010 Reclamation sent letter to NE DNR asking for specific clarification on NE's proposed IMPs
- In early June 2010 Reclamation provided testimony at the Upper Republican Natural Resources District (NRD) and the Middle Republican NRD IMP hearings outlining our concerns with the proposed changes to the IMPs
- In response to our testimony, DNR requested a meeting with Reclamation to provide further details of the adopted IMPs - meetings were held on July 9th and July 30th - DNR provided details of how they would implement the controls identified in the IMPs. The sequence and implementation of the controls were not clear in the IMPs or never made clear at public meetings prior to the IMP hearings.
- On July 27 Reclamation sent letter to DNR requesting a formal written response to our concerns and comments provided in our IMP testimony.

- DNR replied to Reclamation's July 27 letter on August 23, 2010 – letter was nonresponsive to Reclamation's concerns with the revised IMPs
- On Sep 30 Reclamation sent a letter to DNR asking to verify our understanding of the IMPs as we understood from our July 30 meeting - NE has not responded to our letter of Sep 30.

Specific Issues and Responses:

- Reclamation made every effort to understand the IMPs prior to testifying (IMPs are not clearly written)
 - o We presented testimony on the date the hearings were scheduled limiting our review to what the NRDs had written.
 - o The IMPs have a fair amount of contradicting information
 - o If the IMPs mean what the DNR explain at our July 30th meeting then the IMPs need revised to better define intended purpose of the IMPs
 - o Recent editorial from Dan Smith, Manager of the MRNRD lends to more confusion
- Reclamation provided testimony at the IMP hearings outlining our concerns with the proposed IMPs
 - o We believe the IMPs must be developed in a manner to provide sustainability for both GW and SW. This is not stated in the current version of the Upper and Middle IMPs.
 - o The IMPs include controls to curtail surface water use and bypassing inflows through Reclamation reservoirs while failing to address ground water mining
 - o Equity is a very important issue that is not adequately addressed in the IMPs. Surface water users curtailed during Compact Call years while ground water users are allowed to pump should be fairly compensated.
 - o Bypassing water thru Harlan County Lake would render the Consensus Plan meaningless and alter the intent and procedures identified in the Final Settlement Stipulation
- DNR has not responded to Reclamation's Sep. 30th letter
 - o A response from DNR could clarify our understanding of how the IMPs will limit ground water use
 - o We are willing to continue to work with the NRDs and the DNR to gain a full understanding of the IMPs
- Due to potential curtailment, Republican River Basin Irrigation Districts are concerned if surface water is curtailed they will not be able to remain financially viable
 - o The Republican River Basin Irrigation Districts have formally requested a hearing with DNR for determination on the statutory authority of DNR to regulate surface water rights during a "Compact Call" year
- The Lower Republican NRD has not adopted a revised IMP
 - o The LRNRD has drafted an IMP which they believe will provide long-term sustainability and Compact compliance
 - o Reclamation has been working with the LRNRD to draft an IMP that will protect surface water rights and achieve long term compliance

- o The LRNRD is willing to make immediate reductions in their groundwater pumping allocations to meet their Compact obligations
- o To date Nebraska has refused to approve the LRNRDs IMP

Hope this helps,

Craig

From: Campbell, Gary W
Sent: Tuesday, October 26, 2010 4:01 PM
To: Thompson, Aaron M; Swanda, Marvin R; Aycock, Gordon L
Subject: FW: Republican River
Importance: High

See need something in response ASAP.

From: Connor, Michael L
Sent: Tuesday, October 26, 2010 3:00 PM
To: Petersen, Lois Ann; Campbell, Gary W; Soucy, John F
Cc: Quint, Robert J (Bob); Nelson, David L
Subject: Republican River

After the call, I noticed that I had a letter from Gov. Heineman in my inbox. The letter criticizes Reclamation for our testimony at 2 public hearings on NE's proposed integrated water management plans.

I'm sure we're drafting a response but in the interim, I'd like to have a quick summary of the specific issue and our response. Basically, the Governor believes that we did not properly understand certain technical details. Can someone please provide? Thanks.

M

Michael L. Connor, Commissioner
Bureau of Reclamation
1849 C Street, NW
MS-7069-MIB (91-00000)
202-513-0501



From: Swanda, Marvin R
To: Aycock, Gordon L; Scott, Craig D
Subject: RE: Analysis of Forecasted SW CBCU
Date: Tuesday, August 31, 2010 12:08:04 PM

I am sure this is a stupid question, but was the SW use corrected for the Ks use on KBID? In other words we are looking at HCL storage but some of that goes to Ks.

From: Aycock, Gordon L
Sent: Tuesday, August 31, 2010 11:21 AM
To: Scott, Craig D; Swanda, Marvin R
Subject: RE: Analysis of Forecasted SW CBCU

I looked at the data and recreated what DNR had done to get their forecast equation. Actually it looks quite reasonable and in most cases works to our benefit. There are a couple of years where their method will under forecast the SW use by a small percentage but in most cases it over forecasts the use which then results in stricter GW controls than needed. They used 1999-2005 for the correlation which is a small data set. Looking at the full 15 years of data back to 1995 and including 2006- 2009 all of these additional years fall below the curve with the exception of 1997 and 1998. DNR forecast equation would over forecast all of the additional years except for 1997 and 1998.

I looked at a couple of ways that the forecast method might be improved. If we added 1997 and 1998 it would increase the data set while still providing essentially the same R2 value. If 1996 it lower the R2 value as this year is an outlier. Using 1997-2005 result in less under forecasting as you can see in the attached spreadsheet (I added to Craig spreadsheet). We could as that they consider doing this but we risk opening it up to added more years which would drive things the direction of the equation to more years that are under forecast.

As for as under forecasting SW use in Compact Call years I don't know if this is a real problem as in these years the surface water use and the rapid response GW use will be curtailed anyway.

Gordon L. Aycock
Technical Specialist
Reservoir Operations & Water Rights
Bureau of Reclamation
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

Phone: 406-247-7756

From: Scott, Craig D
Sent: Monday, August 30, 2010 2:17 PM
To: Swanda, Marvin R; Aycock, Gordon L
Subject: Analysis of Forecasted SW CBCU

Gordon, attached is a quick analysis of NE's forecasted SW CBCU vs what was actual consumed. Interestingly, there are some years that surface water would have used more than forecasted. Two of those years would have been Compact call years (2002-03).

During the past 4 years SW use has been considerably less than what would have been allowed under the forecast method. The decrease in use is probably a result of the IDs delivering less than they historically would of and less users taking surface water.

It seems that SW use becomes more critical when total reservoir content is less than 300, 000. Also during dry years, SW tends to divert all the natural flows in the streams, leaving less water to pass

Compact gages to add to the CWS.

Craig

From: Swanda, Marvin R
To: Aycock, Gordon L
Subject: RE: COE's letter to NE
Date: Wednesday, August 04, 2010 1:02:59 PM

Gordon

I shared this with Ed and told him about what we think we understand from DNR. Also told him that we are going to put something in writing. Anyway give me a call when you get a chance.

Marv

From: Aycock, Gordon L
Sent: Wednesday, August 04, 2010 12:04 PM
To: Swanda, Marvin R; Scott, Craig D; Thomasson, Ronald R
Cc: Erger, Patrick J; Guenther, R S (Scott)
Subject: COE's letter to NE

Sorry I'm slow getting to this. I looked Ed's letter over and I think its fine with the exception of item 2 under the specific requests. Based on our current understanding of the IMP it might be best to remove this. Since the IMP now appears to rely primarily on reductions of GW use to provide compliance this no longer appears to be a legitimate concern. It might also be of benefit for Ed to state in his letter our current understanding of the IMP and ask NE if they will verify if this is correct. Something like the following:

It is our understanding that the URNRD and LRNRD draft IMPs now rely primarily on curtailing ground water use to meet compact compliance. As we currently understand these IMPs, each of the NRD's use of groundwater will be limited, under the IMPs, to an amount that ensures Nebraska's Compact compliance in any one year. We also understand that the IMPs do provide an exception to this if an NRD acquires another source of water to offset their groundwater use and thus stay within their Allowed Ground Water Depletion to stream flow which will provide Compact compliance. We would appreciate your response on whether this understanding of this basic premise of the IMPs is correct.

We should also request something along this line from NE in writing to clarify our current understanding of the Upper and Middle IMPs.

Gordon L. Aycock
Technical Specialist
Reservoir Operations & Water Rights
Bureau of Reclamation
Great Plains Regional Office
P.O. Box 36900
Billings, MT 59107-6900

Phone: 406-247-7756



From: Swanda, Marvin R
To: Scott, Craig D
Subject: FW: Fw: Nebraska IMPs - Points to Considered 9-1-10 NKAO
Date: Monday, September 06, 2010 8:29:01 PM
Attachments: Image003.jpg

From: Gordon Aycock [aycockg@gmail.com]
Sent: Friday, September 03, 2010 3:11 PM
To: Swanda, Marvin R; Brad.Edgerton@fcdwater.com
Subject: Re: Fw: Nebraska IMPs - Points to Considered 9-1-10 NKAO

Although we don't like it it seems to me that curtailment of surface irrigation is the only way NE can come into compliance during drought years at least for the next 10 years or longer. The benefit of reducing GW use will not have enough impact for another 10-20 years due to the lag. As long as the SW water users are justly compensated I don't see a real problem with this. I believe we have to be willing to give some here are we won't make any progress.

On Fri, Sep 3, 2010 at 11:11 AM, Swanda, Marvin R <MSwanda@usbr.gov<mailto:MSwanda@usbr.gov>> wrote:

From: Brad Edgerton <Brad.Edgerton@fcdwater.com<mailto:Brad.Edgerton@fcdwater.com>>
To: Swanda, Marvin R; 'Mike Delka' <bostwick@gpcom.net<mailto:bostwick@gpcom.net>>
Cc: Scott, Craig D
Sent: Fri Sep 03 08:45:06 2010
Subject: RE: Nebraska IMPs - Points to Considered 9-1-10 NKAO

Marv

I made a few changes.

I am hesitant to acknowledge that they can curtail surface water. I think DNR would read into this if they got their hands on this document. (And they will)

What do you think of just mentioning "curtailment of acres"?

Brad

=====
www.fcdwater.com<<http://www.fcdwater.com>>

Brad Edgerton, Manager
Frenchman Cambridge Irrigation District
P.O. Box 116
Cambridge NE 69022
[cid:Image003.jpg@01CB4B4C.B0DB9790]

Phone 308-697-4535
Fax 308-697-3218
Cell 308-737-6221
Email: Brad.Edgerton@fcdwater.com<mailto:Brad.Edgerton@fcdwater.com> NEW

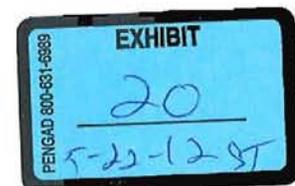
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From: Swanda, Marvin R [mailto:MSwanda@usbr.gov<mailto:MSwanda@usbr.gov>]
Sent: Thursday, September 02, 2010 4:05 PM
To: Brad Edgerton; Mike Delka
Subject: Nebraska IMPs - Points to Considered 9-1-10 NKAO

Brad/Mike

We would appreciate your review and comments of the attached document. This is a result of the meeting with the LRNRD. If you could get something back by the end of the day Friday, 9/3 would be appreciated.

Thanks.



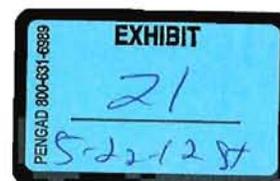
From: [Swanda, Marvin R](#)
To: [Thompson, Aaron M](#)
Subject: FW: Kansas v Nebraska filings
Date: Monday, November 01, 2010 3:53:27 PM
Attachments: [Kan v Neb Kan brief - Reclamation Comments 11-1-2010.docx](#)

From: Aycock, Gordon L
Sent: Monday, November 01, 2010 3:57 PM
To: Swanda, Marvin R; Scott, Craig D
Cc: Erger, Patrick J; Guenther, R S (Scott)
Subject: Kansas v Nebraska filings

Attached is a draft document with my initial comments on the filings. This is real rough and not complete (still have Colorado's brief and Kansas' response to review) but I thought it might be of some use for tomorrow's call.

Gordon L. Aycock
Technical Specialist
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Phone: 406-247-7756



Kansas v. Nebraska
2010 Filings
Reclamation CommentsKansas' Motion for Leave to File Petition, Petition, and Brief in Support

Reclamation generally agrees with Kansas' brief in support of its petition. The areas where we take some exception to the statement in the brief are listed below.

1. Page 9, paragraph 18: Kansas states that Nebraska's pumping has generally remained at or above the pumping levels that drove the filing of the Kansas Bill of Complaint in 1998. Kansas further claims that because of this, depletion's will continue to increase into the future; further complicating Nebraska's ability to comply, and threatening continued and increasing interference with Kansas' future allocations, especially during dry periods. Based on the Compact accounting records Reclamation has reviewed it appears that Kansas is correct. However, if Nebraska's revised 2010 IMPs are enforced as the Nebraska DNR has recently explained these revised IMPs should limit future groundwater pumping to a level that ensures Nebraska stays within its Compact allocation. If Nebraska is successful in limited pumping to this level, depletions should decrease in the future. The problems Reclamation has at this time are; (1) the revised IMPs need considerable clarification and (2) only the Upper and Middle Republican have new revised IMPs for 2010. The Lower NRD is still working on revisions to its IMP for 2010. Reclamation has requested clarification the Upper and Middle NRD's IMPs has worked with the Lower NRD to assist them with revising its IMPs in a manner that will ensure Compact compliance and also provide a sustainable future water supply for both surface and groundwater use.
2. Page 10, paragraph 21: Kansas states: "Unless restrained by this Court, Nebraska will undoubtedly continue to violate the Court's Decree and retain profits derived therefrom." As explained in comment 1 this remains to be seen. If Nebraska is successful in revising the IMPs to limit groundwater pumping to a level reducing Nebraska streamflow depletions to a level that is equal to Nebraska's allocated share of the Republican River supply meeting Compact compliance then it will not be in violation of the Court's Decree in future years.. The problem, at this point, is even though Nebraska is attempting to make the needed revisions to its IMPs with the third version of these IMPs it still has no track record to demonstrate that it will be successful.
3. Page 11, paragraph 27: Kansas states: "It would be appropriate for the Court to specifically order the necessary actions [to ensure Nebraska meets its Compact compliance obligations], and the public interest would not be disserved thereby." If the case is accepted by the Court one of the first items that should be address is whether the newly revised IMPs are sufficient to limit Nebraska depletions to a level that is within it Compact allocation.

Nebraska's Brief In Response to Kansas' Motion for Leave to File Petition

1. Page 3, 1st full paragraph: Nebraska implies that the extreme drought conditions during 2002-2006 were the main reason for its reduced Compact allocation after executing of the FSS in 2003. This is only partially true. Nebraska continued to develop groundwater up to and to some extent even after the FSS was executed in 2003. This development had lagged effects on depleting streamflow and the impacts of this later development are continuing to increase depletions to the Republican River. In 2000, several years prior to the FSS, the Court ruled that the effect of groundwater pumping on surface water flow needed to be accounted for under the Compact yet Nebraska did little if anything to stop the development of new wells until after the FSS was executed in 2003. This lack of action by Nebraska is the primary reason that Nebraska is out of compliance with the Compact.
2. Page 3, 1st full paragraph: Nebraska claims that the fact that Colorado had consistently overused water since the FSS was signed has complicated Nebraska compliance effort. This over use by Colorado should not affect Nebraska. Each state has its own allocation which is not depended on water use by the other two states. The only impact Colorado's over use could have on Nebraska is that of possibly limiting the availability of water to Nebraska's reducing the probability of out of Compliance use by Nebraska. Apparently this has not been the case.
3. Page 5 and 6: Nebraska claims that the initial IMPs contained a blueprint for sustainable water management in the basin and charted a course for Nebraska' compact Compliance. The initial IMP established in 2005 did little to limit groundwater pumping only requiring a reduction in pumping of 5 percent from the 1998-2002 baseline levels. Since 1998-2002 was a relatively dry period, pumping during this time was higher than average thus the 5 percent reduction provided little or no reduction in water use. This insignificant reduction was completely ineffective in providing sustainable water management or Compact compliance. Groundwater depletions, due to Nebraska's pumping, continued to increase at a significant rate through 2007. The 2008 revisions to the IMP required each NRD to limit its groundwater use to its share of Nebraska's "Allowable Groundwater Depletion" (the allowable depletion to streamflow which would be within Nebraska's allocated share of water under the Compact) but then stated that the Nebraska DNR believed that a 20 percent reduction in groundwater pumping would be sufficient to meet this goal. Since the IMP provided no formula or method for determining what the Allowable Groundwater Depletion amount was it does not appear than any of the NRD did any more than attempt to limit pumping to 80 percent of the 1998-2002 baseline pumping levels. Again groundwater depletions to streamflow continued to increase during 2008-2009. In 2010 the NRDs in collaboration with the DNR attempted to further revise the IMPs. The Upper and Middle NRDs new revised IMPs now include a formula for calculated the Allowable Groundwater Depletion based on forecasted water supplies. While this revised method appears to finally have the components needed to allow Nebraska to come into compliance if properly implemented these IMPs remain unclear on how groundwater use will be regulated in relation to surface water use and also contain some confliction statement. The IMPs do not clarify how groundwater use and surface water use regulation will be implemented. These IMPs

also allow groundwater users to bank water and use averaging in staying within their allocated limits. This system of regulation is very problematic during low water supply years when significant reduction in water use is required to meet Compact compliance. In addition the Lower NRD is still working on drafting its IMP. Reclamation is working with the NRDs and the DNR to obtain clarification for the IMPs

4. Page 6 1st paragraph: Nebraska states: "Together these 'second generation' IMPs (1) limit each NRD to its share of Nebraska's allowable groundwater depletion, and (2) require each NRD to further reduce its share of groundwater consumptive use by 20% from the baseline period." This is not true. The 2nd generation IMP (2008 version) required each NRD to reduce its share of groundwater pumping by 20% from the baseline period which the DNR believed was sufficient to allow them to be within their allowable groundwater depletion (see bottom of page 2 of the Middle Republican NRD IMP dated Jan 8, 2008). Also note that the 20% reduction limitation reduction was applied to pumping rates not depletions rates. These limitations were one in the same not additive as described in the brief. Nebraska also claims that these additional limitations (20% reduction versus 5% reduction in 2005 IMP) were needed in part because of the length and severity of the drought. Reclamation does not agree. Even with improved conditions and above average precipitation during 2008 and 2009 Nebraska has barely maintained compact compliance during 2009 based on its own accounting numbers. Reductions in pumping in excess of 20% are needed to provide a sustainable water supply and allow Nebraska to be in compliance on a long term basis.
5. Page 6, last paragraph: Nebraska states that from 2006 to 2008, the NRDs and DNR leased a total of 98,368 acre-feet of surface water from irrigation districts to reduce Nebraska's consumption under the Compact by 51,614 acre-feet. It's important to note that this was needed because the IMPs failed to provide Compact compliance. Also, even with this extra measure Nebraska was still out of compliance in 2006.
6. Page 7, 1st paragraph under heading III: Nebraska states: "DNR has compiled annual information concerning irrigation levels within the Basin, and contrary to Kansas' implications, groundwater pumping in the Nebraska portion of the Basin has declined steadily and significantly since the FSS was executed. Figure 2 in Dunnigan's Decl. shows groundwater pumping steadily declining between 2002 and 2009, however, this figure conflict with the following Figure 3 as this tables show Nebraska's Computed Beneficial Consumptive Use (CBCU) significantly increasing from 2006 to 2009. In 2006 the CBCU was 228,420 acre-feet and in 2009 this had increased to 288,200 acre-feet. If groundwater pumping had decreased by nearly 20,000 acre-feet as shown on Figure 2 it is hard to believe that CBCU would increase by nearly 60,000 acre-feet during this same period. The only other CBCU would be from surface water use and there has not been that much variation in irrigation deliveries to explain this large difference.
7. Page 8, 2nd paragraph: Nebraska claims there are significant accounting errors which prevent accurate accounting of each State's CBCU. This may or may not be true but Nebraska agreed to the current accounting method under the FSS and is obligated to abide by this accounting until a better more accurate method is agreed to by all three states.

8. Page 8, bottom of 2nd paragraph: Nebraska states that they communicated concerns over Kansas' excessive demands in light of Nebraska's efforts to maintain compliance, asserting that Kansas's proposed remedy could reduce Nebraska's consumptive use far more aggressively than required under the Compact. Nebraska urged Kansas to take a close look at Nebraska's second generation IMPs. It appears that even Nebraska was not convinced that its second generation IMPs were adequate as it is now in the process of making significant revisions to the 2008 IMPs. Kansas' remedies may be too severe but until Nebraska comes up with something that it can demonstrate will work neither Kansas or Reclamation can accept that they have gone far enough.

From: Swanda, Marvin R
To: Brad Edgerton; "Steve Henry"; "Dale Cramer"; jkschill@ocsmccook.com
Cc: Thompson, Aaron M
Subject: RE:
Date: Thursday, August 05, 2010 9:46:00 AM
Attachments: [image001.jpg](#)

Steve

Our understanding is that water we have stored prior to any curtailment can be delivered to the Districts. The problem begins if we are not allowed to store the natural flows and the storage goes away.

Marv

From: Brad Edgerton [<mailto:Brad.Edgerton@fcdwater.com>]
Sent: Thursday, August 05, 2010 9:39 AM
To: 'Steve Henry'; 'Dale Cramer'; jkschill@ocsmccook.com
Cc: Swanda, Marvin R; Thompson, Aaron M
Subject: RE:

Good questions. However, storage is second to irrigation in the priority system. I think DNRs end run on us is goal No. 5.

NO. 5 Reserve any stream flow available from regulation, incentive programs, and purchased or leased surface water and ground water required to maintain Compact compliance from any use that would negate the benefit of such regulations or programs, to the extent allowed by statute and the surface water controls of this IMP.

Right now I don't know of anything in statutes that would allow this.

Brad

From: Steve Henry [<mailto:stevehenry@hotmail.com>]
Sent: Thursday, August 05, 2010 9:27 AM
To: brad.edgerton@fcdwater.com; Dale Cramer; jkschill@ocsmccook.com
Cc: mswanda@gp.usbr.gov; athompson@gp.usbr.gov
Subject: RE:

Does this curtailment apply to both our storage water and stream diversions including the "bypass of reservoir" language?

Steve

From: Brad.Edgerton@fcdwater.com
To: dcramer@atcjet.net; jkschill@ocsmccook.com; stevehenry@hotmail.com
CC: mswanda@gp.usbr.gov; athompson@gp.usbr.gov
Subject:

Date: Wed, 4 Aug 2010 17:53:54 -0500
All

The yellow highlighted was added to the IMP after the hearings. This is why DNR is now saying surface water curtailment will only happen as a last resort. My reading is that NRDs would need to shut down all ground water use before this would be available, because curtailment of all wells is an option to them.

Brad

=====
www.fcdwater.com

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From: Swanda, Marvin R
To: Peck, William E; Wergin, Jack B; Scott, Craig D
Cc: Kube, Michael D
Subject: RE: Examples of Split of Harlan County Conservation Pool with Increased Lovewell
Date: Wednesday, March 31, 2010 1:36:18 PM



Ok here is my take on this. First and foremost the split procedure is as agreed upon by the two Bostwicks and approved by the Bureau. Does not involve the states or compact unless they question the way we do it. Have been none so far. Second who knows how this calculation may change should and if the storage be increased in Lovewell. I don't think we should be spending too much time "what ifing this". Not sure that is a word. I am in total agreement with Bill's suggestion that it be an explanation that Aaron can give and not get into examples. Would they want us to tell everybody that Ks gets more water when Lovewell was filled (off season) and HCL is empty? I suspect not.

I think the keys are: we split the total supply, which includes nat flow, to the extent we can evenly to all acres, it is an agreement between Districts and United States, with more storage in Lovewell likely results in more shifting to NE from HCL supply, and agreement would have to be revisited subject to storage change and parties involved.

I think that unless technical staff are along that are familiar with this, I would highly recommend to stay away from numbers and procedures and examples and the numerous followup questions. If Susan wants to know how this works we can give her a separate discussion on this.

Call if you are not clear on where I am coming from.

Marv

From: Peck, William E
 Sent: Wednesday, March 31, 2010 1:17 PM
 To: Wergin, Jack B; Swanda, Marvin R; Scott, Craig D
 Cc: Kube, Michael D
 Subject: RE: Examples of Split of Harlan County Conservation Pool with Increased Lovewell

Hello Jack,

Came up with the following estimates that should give those in attendance an idea of the impact each alternative would have on the split in Harlan County Lake. Notice that the water supply from Harlan County is 130,000 AF when full and not the total 150,000 AF. This is based on the sharing that takes place in Harlan County, we get more when the lake is down and less when it is full.

Example 1 - Existing

Lovewell	24,022 AF	24,022 AF	Kansas Bostwick
Harlan County	130,000 AF	78,900 AF	Kansas Bostwick
		51,100 AF	Bostwick in Nebraska

Example 2 - Lovewell increased by 15,711 AF

Lovewell	39,733 AF	39,733 AF	Kansas Bostwick
Harlan County	130,000 AF	71,700 AF	Kansas Bostwick
		58,300 AF	Bostwick in Nebraska

Example 3 - Lovewell increased by 34,817 AF

Lovewell	58,539 AF	58,539 AF	Kansas Bostwick
Harlan County	130,000 AF	63,100 AF	Kansas Bostwick
		66,900 AF	Bostwick in Nebraska

One could simply explain that the total water supply (storage in Harlan County Lake and Lovewell Reservoir along with flows in the Republican River and White Rock Creek) is utilized by both districts and that the available water is distributed so that all acres get an equal amount of water when possible. Therefore, if more water is made available to those acres below Lovewell (additional storage

in Lovewell Reservoir), less water will need to be passed through to those acres and becomes available to the upstream acres. I would avoid getting to detailed, from our experience it is difficult to explain the entire process and it is not retained long afterwards.

Also, you are correct in that no extra water would be stored in Lovewell because Harlan County is full.

This is my take, Marv and Craig may have more to add.

Bill

From: Wergin, Jack B
Sent: Wednesday, March 31, 2010 10:25 AM
To: Swanda, Marvin R; Peck, William E; Scott, Craig D
Cc: Kube, Michael D
Subject: Examples of Split of Harlan County Conservation Pool with Increased Lovewell

As part of the upcoming tour of the Lower Republican (next Thursday, April 8th), Susan Stover of the Kansas Water Office has asked Reclamation to explain how increasing the conservation pool at Lovewell would help Nebraska (using the two alternatives presented in the Appraisal Study)

In the past, we have said by increasing Lovewell, Bostwick Irrigation District in Nebraska would receive a higher percentage of the storage available in Harlan County.

I would like to put together some specific examples of how this split might work for Aaron's presentation. If I am oversimplifying the process, let me know - I marked some numbers with "?" if I was not sure I had the right number.

Can you provide some details on the split of water between the Bostwick Districts if for the following 3 examples?

EXAMPLE 1 - EXISTING

For 2010 - let's assume

- 1) Harlan County has a full conservation pool (150,000 af?????)
- 2) Lovewell has a full conservation pool (24,022 AF????)
- 3) there will be no extra storage in Lovewell because Harlan is full (per new Corp agreement????)

Can you tell me how the conservation pools for Lovewell and Harlan are split between the Bostwick districts?

	Cons pool	Supply Split		
Lovewell	24,022 AF	24,022 ?	AF	Kansas Bostwick
Harlan	150,000 AF	xx,xxx	AF	Kansas Bostwick
		xx,xxx	AF	Bostwick in Neb

EXAMPLE 2 - Lovewell Conservation Pool is increased by 15,711 AF

For 2010 - let's assume

- 1) Harlan County has a full conservation pool (150,000 af?????)
- 2) Lovewell has a full conservation pool (39,733 AF????)

3) there will be no extra storage in Lovewell because Harlan if full (per new Corp agreement????)

Can you tell me how the conservation pools for Lovewell and Harlan are split between the Bostwick districts?

	Cons pool	Supply Split		
Lovewell	39,733 AF	39,733 ?	AF	Kansas Bostwick
Harlan	150,000 AF	xx,xxx	AF	Kansas Bostwick
		Xx,xxx	AF	Bostwick in Neb

EXAMPLE 3 - Lovewell Conservation Pool is increased by 34,857 AF

For 2010 - let's assume

- 1) Harlan County has a full conservation pool (150,000 a?????)
- 2) Lovewell has a full conservation pool (58,539 AF????)
- 3) there will be no extra storage in Lovewell because Harlan if full (per new Corp agreement????)

Can you tell me how the conservation pools for Lovewell and Harlan are split between the Bostwick districts?

	Cons pool	Supply Split		
Lovewell	58,539 AF	58,539 ?	AF	Kansas Bostwick
Harlan	150,000 AF	xx,xxx	AF	Kansas Bostwick
		Xx,xxx	AF	Bostwick in Neb

From: Swanda, Marvin R
To: Thompson, Aaron M; Espino, Brent
Cc: Scott, Craig D
Subject: Fw: Brad Edgerton-Petition
Date: Wednesday, August 26, 2009 8:07:46 PM

From: Aycok, Gordon L
To: Swanda, Marvin R
Cc: CHAFFIN, JOHN; Erger, Patrick J
Sent: Wed Aug 26 15:23:53 2009
Subject: RE: Brad Edgerton-Petition

This looks fine to me. I did run this past Chaffin with the question: "if asked could we provide testimony at the hearing on technical issues related to the request." He thought we could. It would be policy call and would likely be similar to the Touhy request to testify in the arbitration hearings.

Gordon L. Aycok
Technical Specialist
Reservoir Operations & Water Rights
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P.O. Box 36900
Billings, MT 59107-6900

Phone: 406-247-7756

From: Swanda, Marvin R
Sent: Wednesday, August 26, 2009 12:03 PM
To: Aycok, Gordon L
Subject: FW: Brad Edgerton-Petition

Gordon

Did you have a chance to look at this?

Marv

From: Swanda, Marvin R
Sent: Wednesday, August 19, 2009 8:58 AM
To: Aycok, Gordon L
Cc: Scott, Craig D
Subject: Brad Edgerton-Petition

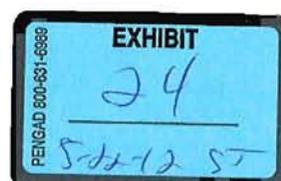
Gordon

We wanted to get a response back to Brad on his request indicating that we will help from a tech. point. Do you think we would testify at the hearing?

Pls. review the letter. It is a simple reply at this time.

Thanks.

Marv



From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#)
Subject: FW: Republican River Districts in NE
Date: Thursday, January 07, 2010 11:37:52 AM

From: Chaffin, John
Sent: Thursday, January 07, 2010 12:24 PM
To: Thompson, Aaron M; Esplin, Brent; Swanda, Marvin R; Erger, Patrick J; Aycock, Gordon L; Guenther, R S (Scott); Kinsey, Tara M
Subject: Republican River Districts in NE

Leroy Sievers, attorney for Frenchman-Cambridge ID called to again put pressure on BOR to become a bigger player in forcing the NRDs and the DNR into much more restrictive management plans. FCID & NBID are preparing a presentation for four states to make this argument to Mike Ryan and Aaron.

He talked to an attorney for the DNR and was informed that DNR heard BOR's testimony but believe that BOR is bluffing and won't fight.

The IDs are going to seek a determination of over appropriation versus the current status of fully appropriated. He has different arguments than before. He did not say that they want BOR to join them, but his message was pretty transparent.

He again reminded me that FCID and now I believe NBID has authorized him to draft lawsuits against the BOR for not fulfilling their contracts by protecting the water rights that are in the name of BOR.

John C. Chaffin
Office of the Solicitor
P.O. Box 31394
Billings, Montana 59107-1394
406-247-7058
FAX 406-247-7587



From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#); [Aycock, Gordon L](#)
Subject: Nebraska IMPs - Points to Considered 9-1-10_ Brad comments
Date: Thursday, September 02, 2010 11:54:59 AM
Attachments: [Nebraska IMPs - Points to Considered 9-1-10_ Brad comments.docx](#)



Nebraska IMPs Key Issues to Consider

Goals and Objectives:

1. Groundwater and Surface Water Protection and Sustainability. The main goal of the Integrated Management Plans (IMPs) should be to provide effective conjunctive management of surface water and groundwater use to ensure that these vital resources are protected and sustained. To accomplish this, groundwater use must be reduced to a level that prevents groundwater mining and allow the groundwater level and surface water flows to start a gradual recovery. Providing sustainability should be a primary goal for each NRD as well as the basin as a whole. Meeting Compact compliance should be a secondary goal of the IMPs after first meeting the goal of sustainability. Meeting the goal of sustainability will go a long way in providing Compact compliance and minimize the need for drastic measure during water short years.
2. Meet the Terms of the Final Settlement Stipulation (FSS) - Moratorium on New Wells. The first issue addressed in the FFS is a Moratorium on New Wells. The intent of this was to cap new development preventing the addition of new irrigated lands after 2002. It is our understanding that while no new wells were drilled after 2002, there were a large number of new irrigated lands added after 2002, under wells that had been previously drilled but not developed. It is Reclamation position that the development of any new lands after 2002 is in violation of the FSS unless these lands replace existing irrigated lands taken out of production after 2002. The IMPs should address this issue and require that any new irrigated lands, developed after 2002, be curtailed or substituted for other lands that were in use prior to 2003.

Equity:

1. Method for Allocating Water Between NRDs: The first issue that should be addressed in determining an effective method for allocating water between the three NRD is the need to have sustainability for each of the three NRD. Since some areas are using groundwater at a much high rate than recharge, the reduction in use for this area may need to be higher than in other areas. While this may not appear to be equitable it is necessary to protect and sustain the future water resource for that area. The groundwater model should be used to the degree possible to determine what the allowable level of use is for each of the NRDs that provides sustainability for both groundwater and surface water supplies. Once these values are determine than they should be used to develop a percentage allocation for each of the three NRDs. In addition any imported water such as the water entering the Republican River from the groundwater mound in the Platte River Basin should be discounted before determining the allocation percentages. Since this imported water is not part of the natural supply its benefit should be shared equally by all of the resource districts in the Republican River basin.
2. Curtailment of Surface Water Use and Rapid Response Wells during Water Short Years: A method needs to be developed to ensure equity between users that are

curtailed in water short years and GW users that are allowed to continue to pump. Either the water users that are curtailed need to be compensated for their loss of water or additional restrictions need to be added to the non-curtailed users in future years to make up for loss of water to the curtailed users. If monetary compensation cannot be provided then the water allocation for the non-rapid response wells should be set at a lower level to provide equity between groundwater users. It appears that the only way to ensure equity for surface water users is to provide monetary compensation or set a low allocation for all groundwater users that will minimize the need for surface water curtailment. This might be done by using something like a 40 percentile year for determining the allowable groundwater depletion rather than a average (50 percentile) year.

3. Recognition of Earlier Rights: Water users who developed and have beneficially used water for several decades should have a priority of use ahead of newer development, especially that development over the last 20 years. It is the water development since the late 1970s that has resulted in groundwater mining and out of compliance use by Nebraska not the earlier development. While this prior right is recognized between surface water users under the prior appropriation doctrine it has not been recognized for groundwater use. It is our understanding that the IMPs can be structured to provide some recognition of priority for groundwater use after July 1, 1997. To provide equity groundwater users who developed their land after July 1, 1997 should have their use curtailed during water short years before curtailing the rapid response wells and surface water use.

4. Water management outside the District Boundary: Nebraska State Statutes 46-703.4 states. The Legislature recognizes that ground water use or surface water use in one natural resources district may have adverse affects on water supplies in another district or in an adjoining state. The Legislature intends and expects that each natural resources district within which water use is causing external impacts will accept responsibility for ground water management in accordance with the Nebraska Ground Water Management and Protection Act in the same manner and to the same extent as if the impacts were contained within that district. NRDs need take responsibility for harm caused to downstream water users in other District and adopt rules to restore equity or provide compensation for the damages.

5. It is unwise and not advisable to pass water thru upstream reservoirs based on a dry year projection. once the water is released there is no way to get it back if significant runoff events would occur downstream nullifying the benefit of the releases. Storage permits should not be subject to the compact call. Unless fair and equitable compensation is provide.

3- In addition the bypass of inflows thru HCL invalidates the requirement of the FSS relative to the determination of a Water Short Year as well as the determination of the 130,000 af irriagion supply. The calculation in those years is meaningless and contrary to the intent of the Concensus Plan. This would likely require RRCA concurrence.

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Forecasting Water Supply and Determining Allowable Groundwater Depletions

1. Forecasting Water Supply: The method purposed by the DNR for forecasting the upcoming year's water supply appears to be a reasonable and effective method. This method should be incorporated as an integral part of the IMP as it is essential for meeting Compact compliance on a year by year basis. Consideration should be given to using 1997-2005 (rather than 1999-2005) for developing the forecast for surface water use as this would provide a larger sample of years coverings water use from the time the Nebraska reservoirs were full following the flood year of 1996 through the drought period when reservoir storage was greatly depleted. Using this period of years results in the same or a slightly between R^2 value indicating a very strong correlation between reservoir storage and water use. Since 1996 was a flood year it is not a representative year for developing a correlation between reservoir storage and water use.
2. Allowable Groundwater Depletion: We agree with the method for calculating the Allowable Groundwater Depletion as proposed by the DNR. In the Upper and Middle IMPs the term "allowable surface water depletion" is used. Since the surface water use is only limited by the naturally available supply from year to year along

with water availability under the prior appropriation doctrine we do not agree that this term should be used as it implies that surface water depletion are somehow allocated as is groundwater depletions. To avoid confusion the term "allowable" should not be included in front of "surface water depletion" in the JMPs.

Defined Terms

From: [Swanda, Marvin R](#)
To: [Brad Edgerton](#); [Mike Delka](#)
Subject: Nebraska IMPs - Points to Considered 9-1-10 NKAO
Date: Thursday, September 02, 2010 3:05:26 PM
Attachments: [Nebraska IMPs - Points to Considered 9-1-10 NKAO.docx](#)

Brad/Mike

We would appreciate your review and comments of the attached document. This is a result of the meeting with the LRNRD. If you could get something back by the end of the day Friday, 9/3 would be appreciated.

Thanks.

Marv



Nebraska IMPs
Key Issues to Consider
NKAO – Sept 2010

Goals and Objectives:

1. Groundwater and Surface Water Protection and Sustainability. The main goal of the Integrated Management Plans (IMPs) should be to provide effective conjunctive management of surface water and groundwater use to ensure that these vital resources are protected and sustained. To accomplish this, groundwater use must be reduced to a level that prevents groundwater mining and allow the groundwater level and surface water flows to start a gradual recovery. Providing sustainability should be a primary goal for each NRD as well as the basin as a whole. Meeting Compact compliance should be a secondary goal of the IMPs after first meeting the goal of sustainability. Meeting the goal of sustainability will go a long way in providing Compact compliance and minimize the need for drastic measure during water short years.
2. Meet the Terms of the Final Settlement Stipulation (FSS) - Moratorium on New Wells. The first issue addressed in the FFS is a Moratorium on New Wells. The intent of this was to cap new development preventing the addition of new irrigated lands after 2002. It is our understanding that while no new wells were drilled after 2002, there were a large number of new irrigated lands added after 2002, under wells that had been previously drilled but not developed. It is Reclamation position that the development of any new lands after 2002 is in violation of the FSS unless these lands replace existing irrigated lands taken out of production after 2002. The IMPs should address this issue and require that any new irrigated lands, developed after 2002, be curtailed or substituted for other lands that were in use prior to 2003.

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groundwater depletions. To avoid confusion the term “allowable” should not be included in front of “surface water depletion” in the IMPs.

From: [Swanda, Marvin R](#)
To: [Scott, Craig D](#)
Subject: Fw: URNRD IMP HearingTestimony June 10 2010 DRAFT May 27
Date: Thursday, May 27, 2010 2:03:10 PM
Attachments: [image003.jpg](#)
[URNRD IMP HearingTestimony June 10 2010 DRAFT May 27 with BDF comments.docx](#)

We also cannot store non proj water ie if we store compact water in hcl It than becomes proj water. Otherwise it would have to be bypassed harming th bostwicks.

From: Brad Edgerton <Brad.Edgerton@fcdwater.com>
To: Scott, Craig D
Cc: Swanda, Marvin R; Thompson, Aaron M
Sent: Thu May 27 13:27:10 2010
Subject: RE: URNRD IMP HearingTestimony June 10 2010 DRAFT May 27

Craig
I like what I see.
I would make a few suggestions.
See attached.
Brad

=====
www.fcdwater.com

Brad Edgerton, Manager
Frenchman Cambridge Irrigation District
P.O. Box 116
Cambridge NE 69022
[[cid:image003.jpg@01CAFDA8.B1715C90](#)]

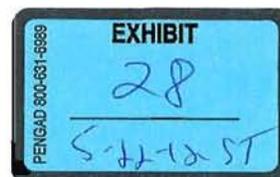
Phone 308-697-4535
Fax 308-697-3218
Cell 308-737-6221
Email: Brad.Edgerton@fcdwater.com NEW

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From: Scott, Craig D [<mailto:CScott@usbr.gov>]
Sent: Thursday, May 27, 2010 12:48 PM
To: Brad Edgerton
Subject: URNRD IMP HearingTestimony June 10 2010 DRAFT May 27

Brad, attached is draft of our IMP testimony. Marv asked that I send you a copy and asked that you not share at this point because it has not yet been approved by Region.

Let us know if you have any additional comments.
Craig



From: Swanda, Marvin R
To: Thompson, Aaron M; Espino, Brent; "avrocka@gmail.com"; Avrock, Gordon L; Scott, Craig D
Subject: Fw: Nebraska IMPs - Points to Considered 9-1-10 NKAO
Date: Friday, September 03, 2010 11:11:36 AM
Attachments: image003.jpg
Nebraska IMPs - Points to Considered 9-1-10 NKAO Brad comments 9-3-2010.docx

From: Brad Edgerton <Brad.Edgerton@fcidwater.com>
To: Swanda, Marvin R; 'Mike Delka' <bostwick@gpcom.net>
Cc: Scott, Craig D
Sent: Fri Sep 03 08:45:06 2010
Subject: RE: Nebraska IMPs - Points to Considered 9-1-10 NKAO

Marv
I made a few changes.
I am hesitant to acknowledge that they can curtail surface water. I think DNR would read into this if they got their hands on this document. (And they will)
What do you think of just mentioning "curtailment of acres"?

Brad

=====
www.fcidwater.com

Brad Edgerton, Manager
Frenchman Cambridge Irrigation District
P.O. Box 116
Cambridge NE 69022
[cid:image003.jpg@01CB4B4C.B0DB9790]

Phone 308-697-4535
Fax 308-697-3218
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Email: Brad.Edgerton@fcidwater.com NEW

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From: Swanda, Marvin R [mailto:MSwanda@usbr.gov]
Sent: Thursday, September 02, 2010 4:05 PM
To: Brad Edgerton; Mike Delka
Subject: Nebraska IMPs - Points to Considered 9-1-10 NKAO

Brad/Mike

We would appreciate your review and comments of the attached document. This is a result of the meeting with the LRNRD. If you could get something back by the end of the day Friday, 9/3 would be appreciated.

Thanks.

Marv



**Nebraska IMPs
Key Issues to Consider
NKAO – Sept 2010**

Goals and Objectives:

1. Groundwater and Surface Water Protection and Sustainability. The main goal of the Integrated Management Plans (IMPs) should be to provide effective conjunctive management of surface water and groundwater use to ensure that these vital resources are protected and sustained. To accomplish this, groundwater use must be reduced to a level that prevents groundwater mining and allow the groundwater level and surface water flows to start a gradual recovery. Providing sustainability should be a primary goal for each NRD as well as the basin as a whole. Meeting Compact compliance should be a secondary goal of the IMPs after first meeting the goal of sustainability. Meeting the goal of sustainability will go a long way in providing Compact compliance and minimize the need for drastic measure during water short years.
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2. Curtailment of ~~Surface Water Use and Rapid Response Wells acres~~ during Water Short Years: A method needs to be developed to ensure equity between users, ~~curtailment of some while others continue to pump and in most case continue to mind ground water which adds to future problems doesn't address the real issue of an "over developed resource"~~ It's obvious that compensation in the short term needs to be provided, in addition an aggressive plan to reduce irrigated acres need to be a ~~that~~top priority. A scientific evaluation of just how far Nebraska has overdeveloped would provide some useful information with understanding the severity of the ~~problem.~~ ~~are curtailed in water short years and GW-users that are allowed to continue to pump.~~ Either the water users that are curtailed need to be compensated for their loss of water or additional pumping restrictions across the basin need to be initiated now to reduce the need for ~~surface water users and rapid response wells acres~~ to unfairly make up the deficits in dry years. If monetary compensation cannot be provided then the water allocation for the non-rapid response ~~wells acres~~ should be set at a lower level to provide equity between ~~groundwater users.~~ ~~The IMP should have exact details of how compensation will be provided, how much compensation is appropriate, and where the compensation will come from.~~ Consideration should be ~~give to the future harm from a depleted aquifer by those that continue to mind ground water.~~ It appears that the only way to ensure equity for surface water users is to provide monetary compensation or set a low allocation for all groundwater users that will minimize the need for surface water curtailment. This might be done by using something like a 40 percentile year for determining the allowable groundwater depletion rather than an average (50 percentile) year.

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From: Swanda, Marvin R
To: Avcocks, 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](#)

fyl

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

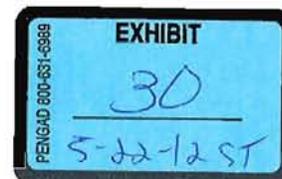
Brian
Attached is a copy of FCID's testimony at the MRNRD's hearing last night.
I worked with Reclamation on the water short year scenario and I believe it is very close to reality.
Thanks
Brad

=====
www.fcidwater.com

Brad Edgerton, Manager
Frenchman Cambridge Irrigation District
P.O. Box 116
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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 have 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.

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](#)

-----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.

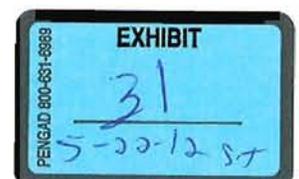
Here is the report from one of the USACE attorneys who attended the meeting between Kansas and the Solicitor General's Office. Three of the attachments are marked confidential, but I was advise there was not discussion of limiting distribution of those documents. I suggest, however, that we not provide 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.
Do not forward without permission from the Office of Counsel.
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 eliminate 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

This PDF file was created using the eCopy Suite of products. For more information about how you can eCopy paper documents and distribute them by email please visit <http://www.ecopy.com>

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.
-

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

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

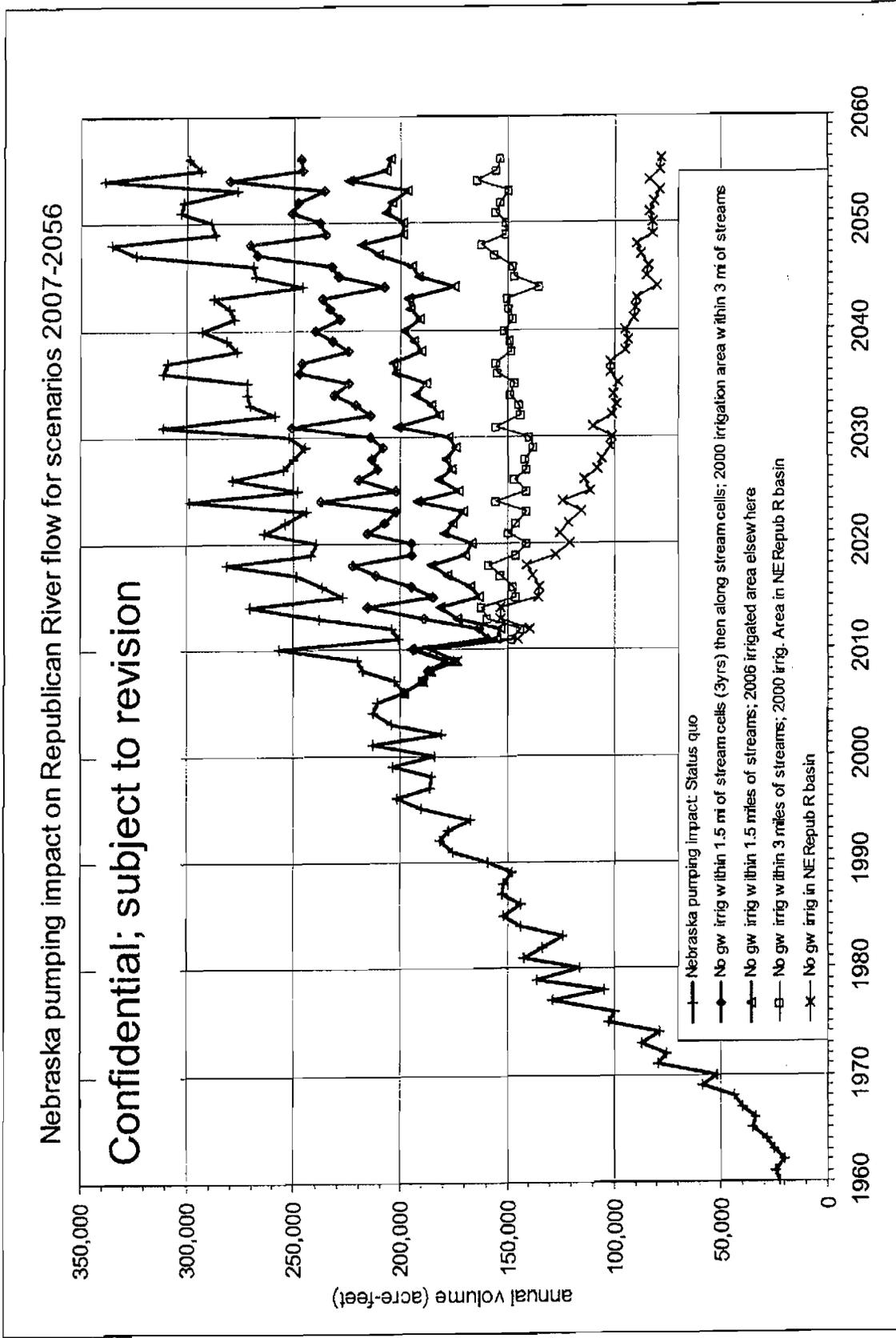
Year	Allocation	Computed Beneficial Consumptive Use	Imported Water Supply Credit	Allocation - (CBCU - IWS Credit)
2003	167,780	48,910	NA	118,870
2004	137,450	38,120	NA	99,330
2005	136,820	44,310	NA	92,510
2006	126,730	47,010	NA	79,720
2007			NA	
Average	142,200	44,590		97,610

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)

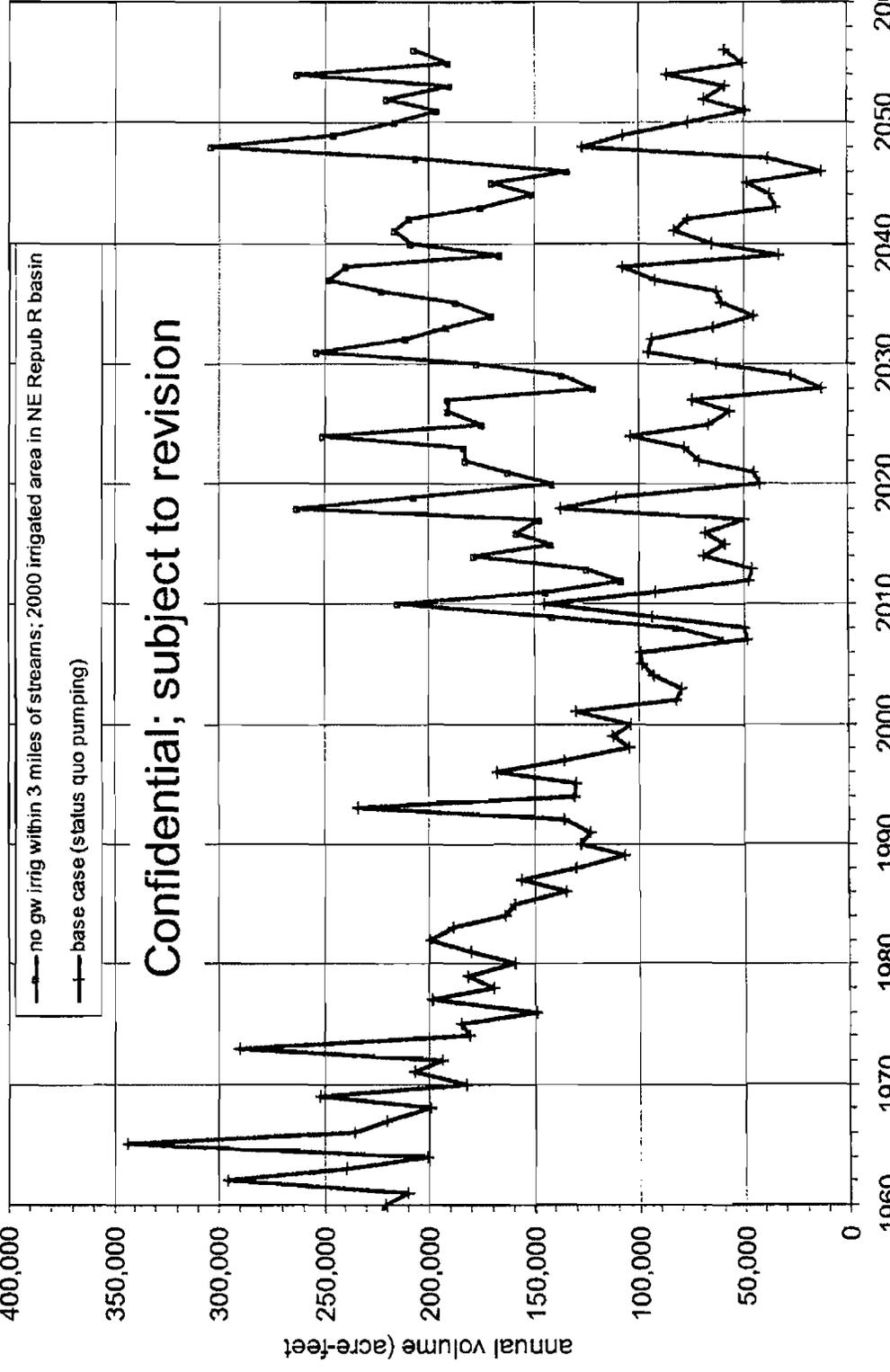
Table 5C: Nebraska's Compliance During Water-Short Year Administration

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)

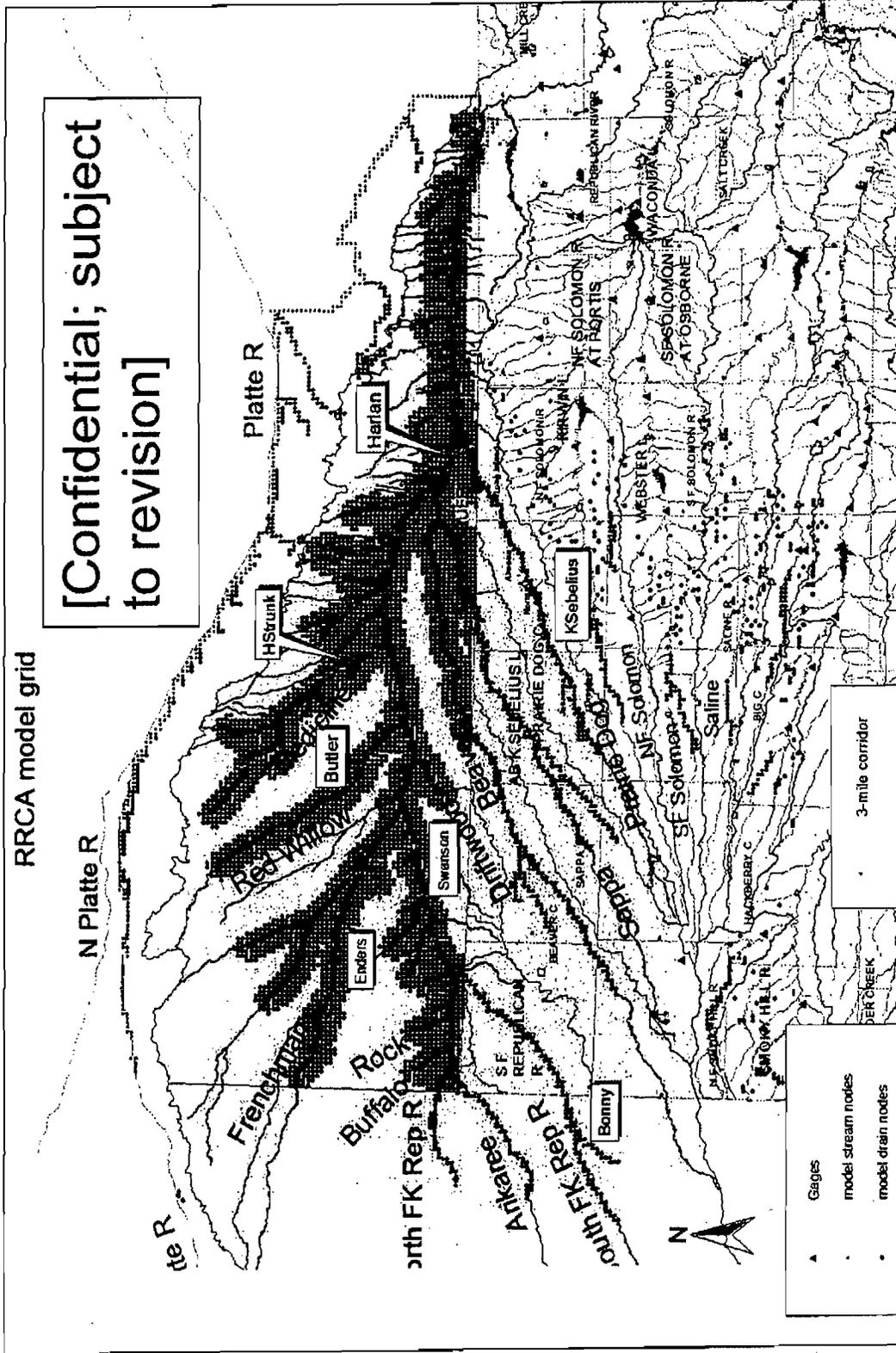


Nebraska pumping impact on Republican River flow for pumping scenarios (2007-2056).

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).

From: [Swanda, Marvin R](#)
To: [Espino, Brent](#)
Subject: FW: Republican 1 and 2 Mile Buffers
Date: Thursday, September 10, 2009 2:20:20 PM
Attachments: [Republican Buffer.pdf](#)

These will be a handout.

From: Rouse, Mark
Sent: Thursday, September 10, 2009 1:49 PM
To: Scott, Craig D; Swanda, Marvin R; Peck, William E
Subject: FW: Republican 1 and 2 Mile Buffers

From: Miller, John J
Sent: Thursday, September 10, 2009 1:09 PM
To: Rouse, Mark
Subject: RE: Republican 1 and 2 Mile Buffers

Mark,

Thanks for checking the maps for me, attached is a corrected version.

Here is a breakdown of the acres by map:

Frenchman Cambridge
Total Acres = 45669
Outside 1 mile buffer = 15696
Outside 2 mile buffer = 713.6

Bostwick Nebraska

Total Acres = 22406
Outside 1 mile buffer = 4562
Outside 2 mile buffer = 119.4

John

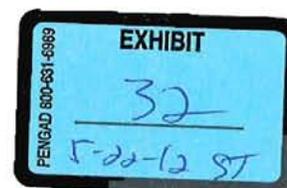
From: Rouse, Mark
Sent: Thursday, September 10, 2009 9:52 AM
To: Miller, John J
Subject: RE: Republican 1 and 2 Mile Buffers

John these will be good. There needs to be an update on the description at the bottom for 1 and 2 mile. Currently it only has 2 mile. Just don't want confusion. It states 2 miles even on 1 mile pages. Also could you give me the total acres under each scheme?

Thanks,

Mark

From: Swanda, Marvin R
Sent: Wednesday, September 09, 2009 4:16 PM
To: Rouse, Mark
Subject: FW: Republican 1 and 2 Mile Buffers



From: Miller, John J
Sent: Wednesday, September 09, 2009 2:07 PM
To: Swanda, Marvin R; Kube, Michael D; Wergin, Jack B
Cc: Scott, Craig D
Subject: Republican 1 and 2 Mile Buffers

Everyone,

Here is my latest draft for the Republican River. Please look it over and let me know if you have anything to add.

John

From: Miller, John J
Sent: Tuesday, September 08, 2009 11:32 AM
To: Swanda, Marvin R; Kube, Michael D; Wergin, Jack B
Cc: Scott, Craig D
Subject: RE: 2Mile_Buffer.pdf - Adobe Acrobat Standard

Attachment

From: Swanda, Marvin R
Sent: Friday, September 04, 2009 3:24 PM
To: Miller, John J; Kube, Michael D; Wergin, Jack B
Cc: Scott, Craig D; Kube, Michael D
Subject: RE: 2Mile_Buffer.pdf - Adobe Acrobat Standard

John

It should include the tribes also. Not sure if you have that on here or not..

Thanks.

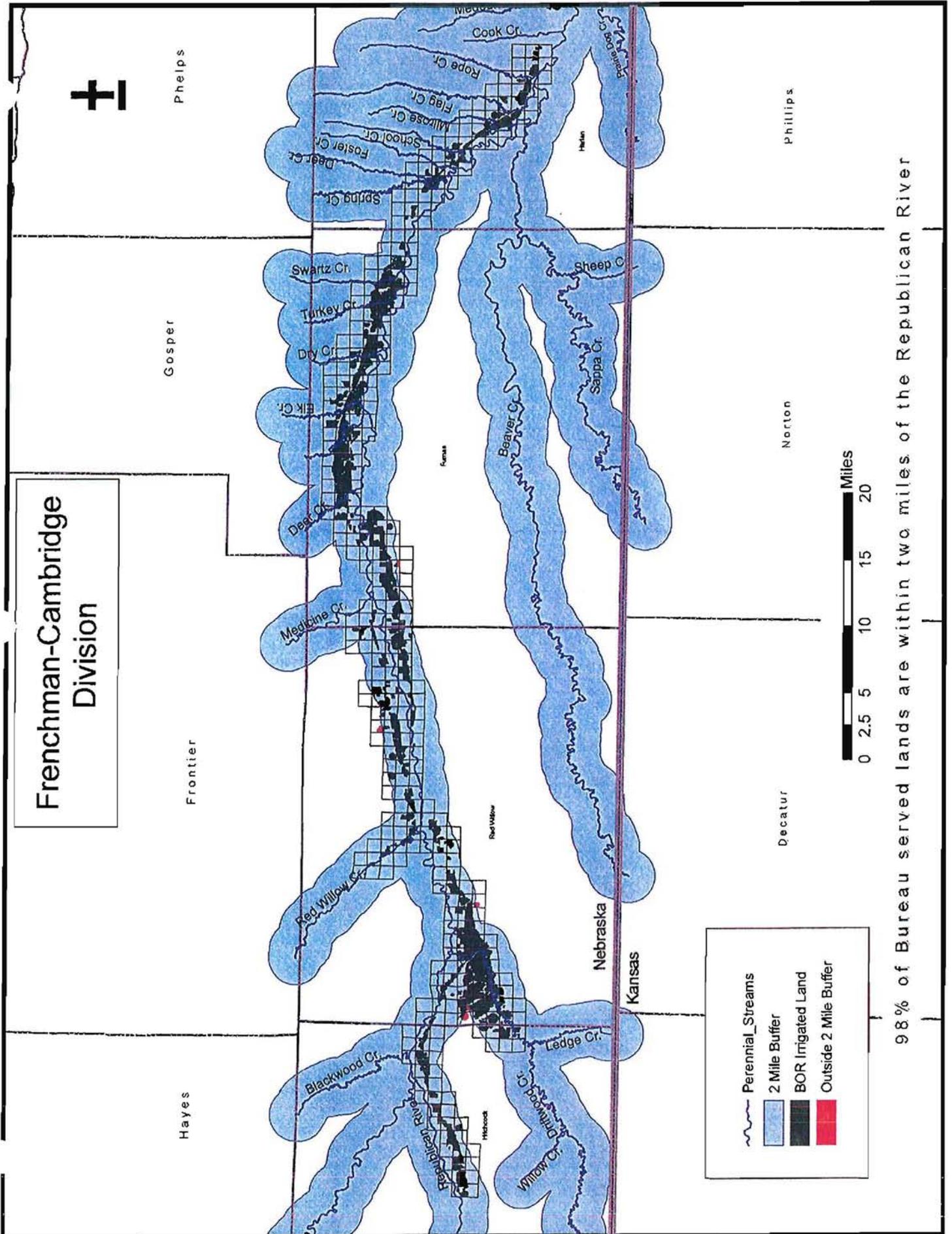
Marv

From: Miller, John J
Sent: Friday, September 04, 2009 2:55 PM
To: Kube, Michael D; Wergin, Jack B
Cc: Swanda, Marvin R; Scott, Craig D; Kube, Michael D
Subject: 2Mile_Buffer.pdf - Adobe Acrobat Standard

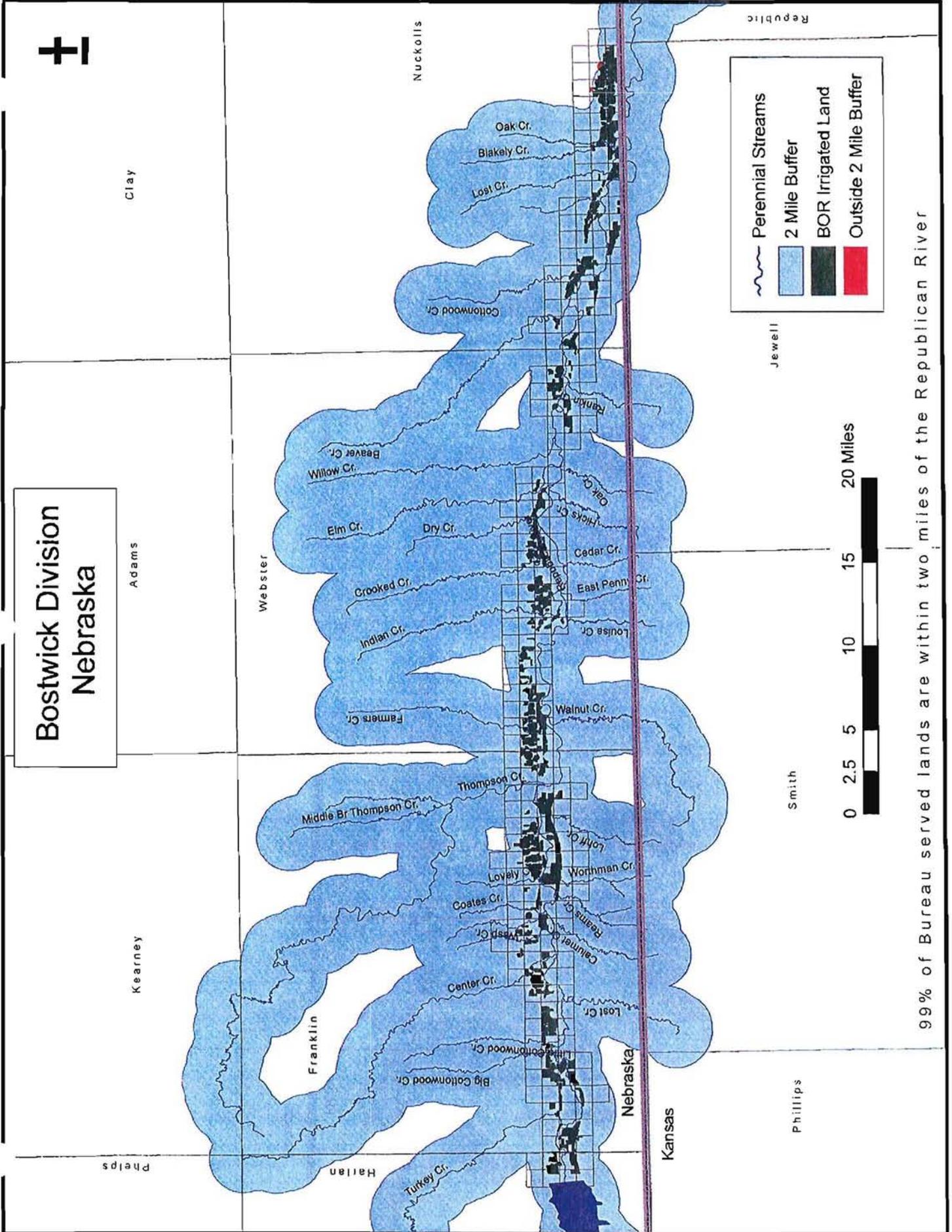
Jack,

Here is the 2 mile buffer you asked for. Let me know if you need anything else

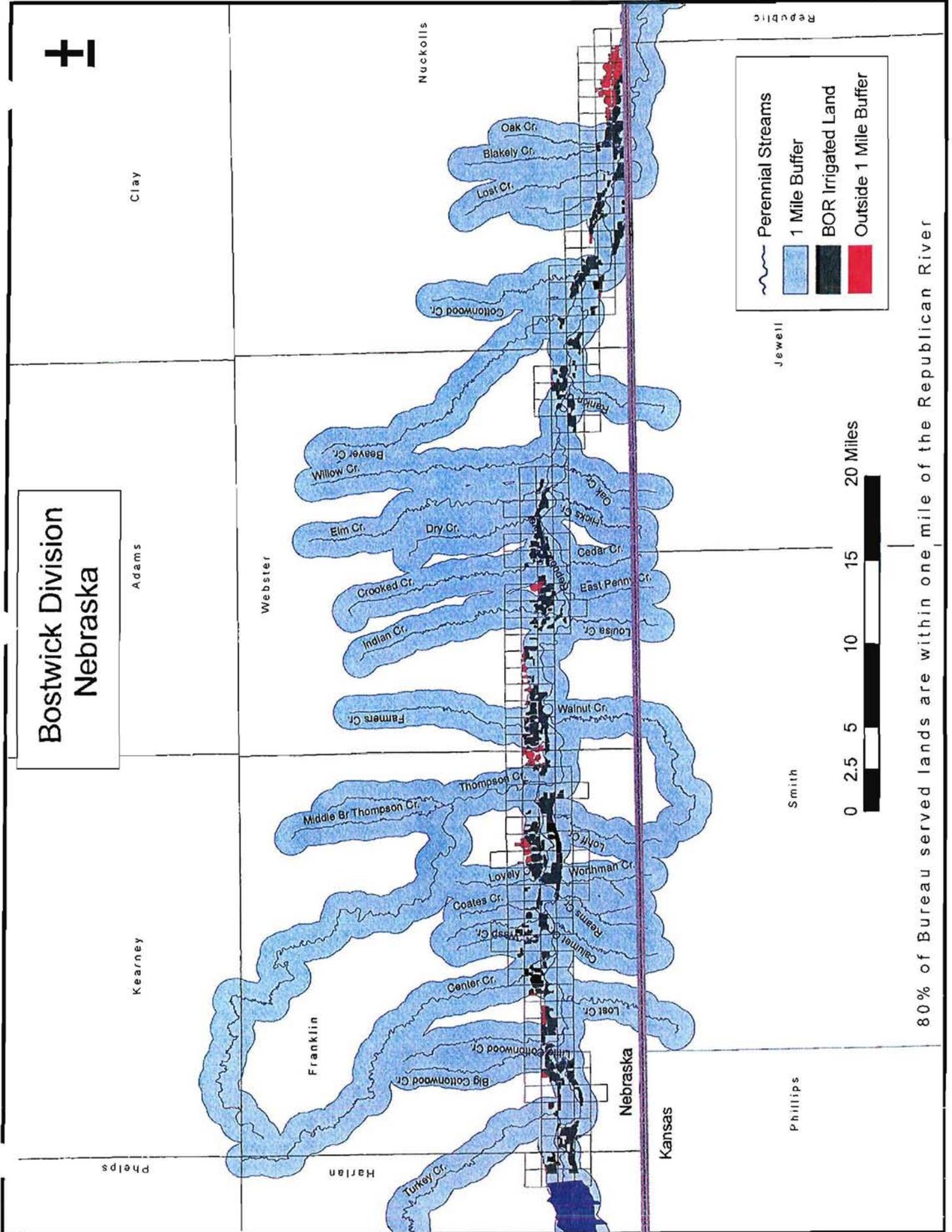
John



98% of Bureau served lands are within two miles of the Republican River



99% of Bureau served lands are within two miles of the Republican River



80% of Bureau served lands are within one mile of the Republican River

From: Swanda, Marvin R
To: Avcock, Gordon L; Scott, Craig D; Thompson, Aaron M; Esplin, Brent; Barfield, Dave
(david.barfield@kda.ks.gov); (chris.beightel@kda.ks.gov)
Subject: Republican River Issues

When: Wednesday, May 26, 2010 10:00 AM-12:00 PM (GMT-06:00) Central Time (US & Canada).

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

nThe purpose of the call is to share thoughts and views on the intent and potential impact of the draft revisions to the IMP's for the URNRD, MRNRD, and Nebraska DNR.

Bridge Number: 877-932-9308, pass code: 655745

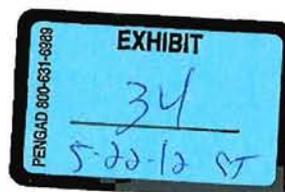


From: [Swanda, Marvin R](#)
To: [Gordon Aycock \(aycock@gmail.com\)](#); [craigscoott@yahoo.com](#)
Cc: [Aycock, Gordon L](#); [Scott, Craig D](#); [Thomson, Aaron M](#)
Subject: Meeting with Kansas
Date: Friday, August 13, 2010 8:43:02 AM
Attachments: [NOTES--DNR Meet7302010 \(21.2 KB\).msg](#)

The meeting in Topeka on Tuesday is a go from 9-12 central time.

Gordon the state will get a call in number and may have something to follow along with on the computer. Will get that to you as soon as they email it..

Our notes of the DNR meeting and comments on the IMPs would be good background info to have available.



From: [Marvin Swanda](#)
To: [Alice Johns](#); [Stephen Ronshaugen](#)
Subject: StrategyPaperRepublican52006
Date: Friday, December 09, 2011 10:55:50 PM
Attachments: [Strategy.doc](#)

I made some changes to Steve's version.

Marv



Created on ~~5/22/2006 8:55:00 AM~~~~5/22/2006 8:55:00 AM~~5/4/2006 1:56:00 PM

accounting, accounting for all reservoirs 15 acre-feet and larger within the river basin and jointing participation in a study to determine the impact of farm ponds and land terracing on the water supply of the basin, recognition of the Consensus Plan. The agreement complies with the provisions of the long-term water supply contracts recently negotiated between Reclamation and five irrigation districts in the basin.

The waters of the Republican River Basin are allocated to the States of Colorado, Kansas and Nebraska through the Republican River Compact approved by Congress in 1943. Federal reservoirs have been built on the main stem and many of the main tributaries of the river. The Compact addresses the annual volume allocated and the annual consumptive use to the states. However, for irrigation or other uses, timing and availability of the flows are very critical. Water that is annually accounted for under the Compact may not be available when needed due to existing system limitations.

~~Kansas filed a U.S. Supreme Court lawsuit against Nebraska and Colorado in 1998 because they believed Nebraska had been using more than their allocation of the Republican River water supply. The States negotiated a settlement that was approved by the United States Supreme Court in May of 2003. In accordance with the Final Settlement Stipulation, "The States agree to pursue in good faith, and in collaboration with the United States, system improvements in the Basin, including measures to improve the ability to utilize the water supply below Hardy, Nebraska on the main stem." The Feasibility Study, if authorized by Congress (legislation introduced in 2006), is intended to assist in fulfilling this provision of the settlement stipulation.~~

POSITION OF INTERESTED PARTIES: Compliance with tThe Final Settlement Stipulations resides with the states involved.

RECLAMATIONS POSITION/ROLE: Reclamation will continue to support the states in their efforts inasmuch as these efforts comply with Reclamation law, and the provisions of the long term water supply contracts between the Districts and Reclamation. The states of Nebraska and Kansas should continue working together to fully comply with all aspects of the Final Settlement Stipulations. Reclamation should support make every effort attempt to restore ~~every~~ surface water inflows to the federal reservoirs to ensure project viability ~~reservoirs to utilize our existing water rights~~. Reclamation has no ownership in creating the over allocation issue between the states and shall remain neutral in discussions with the state but should work closely with the Natural Resource Districts ~~water conservation districts~~ within the auspices of laws and regulations.

Issues that can be addressed now should be prioritized to effectively and efficiently use the federal funding. All land records should be evaluated to ensure they are correct and up to date, and analysis of recently enacted Water Task Force legislation in Nebraska as it relates to natural rights vs. Reclamation project water rights should be undertaken to ensure the government knows the legal standing. Completion of these items will ensure that Reclamation is in a good position to move forward in the future. Note: This last parag. Seems confusing to me. Marv

Created on ~~5/22/2006 8:55:00 AM~~~~5/22/2006 8:55:00 AM~~~~5/4/2006 1:56:00 PM~~

REPUBLICAN RIVER RECLAMATION STRATEGY

PURPOSE OF PAPER: Provide a strategic plan for Reclamation to follow for issues involving the Republican River Compact Lawsuit Settlement Implementation, Republican River Basin – Nebraska, Kansas, and Colorado

CURRENT STATUS: Nebraska's compliance with the Republican River Compact is measured with a 5-year average starting in 2003 through 2007~~5~~, and during water short years, a two year average (first two year average started in 2005).- A water short year is designated when Harlan County Lake has less than 119,000 af available for irrigation. This is likely the second year with the water short designation. In an effort to comply with the Republican River Compact Settlement, Nebraska through its Department of Natural Resources (State) entered into negotiations to purchase and/or lease surface water supplies from irrigation districts in the Republican River Basin for the 2006 irrigation season.

Agreements have been negotiated to allow the Bostwick Irrigation District and the Frenchman Valley Irrigation District in Nebraska to sell and/or lease a portion of their water supply to the State to help the State achieve compact compliance. Acceptance of both agreements is subject to appropriation of funds by the State for one-time payments to each District (funds have been appropriated and become available July 1, 2006). The affected districts~~State~~ held two meetings in March with irrigators to share details of the agreements and to address concerns. Irrigators present at both meetings voted over-whelmingly in favor of accepting the State's agreement.

These water agreements would assist Nebraska with achieving compliance with the Republican River Compact Settlement. However, a sizeable reduction in consumptive use or greater than normal runoff must occur during 2006 and 2007 in order for Nebraska to become 100 percent compliant with the compact. (It is estimated that Nebraska has over-~~used~~~~allocated~~ their compact allocations~~surface water~~ by \approx 100,000 acre feet ~~above the compact agreement or more~~ by the end of calendar year 2005).

BACKGROUND: : On May 26, 1998, Kansas filed a petition with the U.S. Supreme Court complaining Nebraska was using more than its share of the water of the Republican River. On November 15, 1999, the Supreme Court appointed a Special Master for the case. Because all major water development structures in the Republican River Basin were constructed by the Bureau of Reclamation and the Corps of Engineers, the United States was allowed to participate as an *amicus curiae*. In December 2001, the Special Master granted a stay to allow the parties time to attempt to negotiate a settlement. A final settlement agreement was signed by the governors and attorney generals and filed with the Special Master on December 16, 2002. The settlement provides a moratorium on new groundwater wells, special rules for administration of water during water-short years, protection of storage releases, minimized flood flow effects on the accounting, recognition by Nebraska of a 1948 priority date for the Kansas-Bostwick Irrigation District, inclusion of the impacts of groundwater pumping from tableland wells in the

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From: Swanda, Marvin R
To: Wergin, Jack B; Kube, Michael D; Scott, Craig D; Gjerde, James (Kip) H; Esplin, Brent
Subject: RE: FSS - System Operation Study - WaterSMART SOR
Date: Thursday, March 11, 2010 7:15:34 AM

Jack

To my knowledge there has not been an operations study done. Honestly when we look at the struggle we have had with the Conservation study, Lower RR study, Fr. Valley study, and the current situation with things going on with the compact I am not sure where you go with this. I would be surprised if any of the states would touch this right now considering all that is going on with the compact issues. I am not sure how we would have staff, time etc. Sorry for the negative view but I couldn't come up with anything positive.

Marv

From: Wergin, Jack B
Sent: Wednesday, March 10, 2010 9:42 AM
To: Kube, Michael D; Swanda, Marvin R; Scott, Craig D; Gjerde, James (Kip) H; Esplin, Brent
Subject: FSS - System Operation Study - WaterSMART SOR

This might be on a tangent to the Lower Republican discussions, but it exploring all options, I presented the option of investigating the possibility of utilizing the WaterSMART Challenge Grant's System Optimization Review (SOR) as a way to accomplish some of the study tasks in the Lower Republican.

In reviewing the Settlement language, there is specific mention to a "systems operation study" which will be used to revisit the 5-year running average.

To my knowledge, I have not heard anything from anyone who knows if this study has been done or who is supposed to initiate the study. Maybe it has been done and I just don't know about it.

Seems to me the SOR program would be an excellent opportunity to get some funding for this system operations study - the states would still have to put up the 50% non-fed requirement, but Reclamation could use the funding for WaterSMART program. It seems like a good fit for the SOR Program

Again, this would be over the entire Republican Basin, not just the Lower.

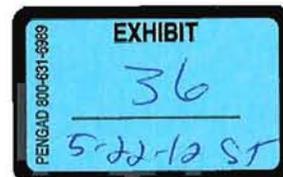
The last info I received was the challenge grant announcement will be out in a couple weeks.

FINAL SETTLEMENT STIPULATION
December 15, 2002

The States of Kansas, Nebraska and Colorado, hereby enter into this Final Settlement Stipulation as of December 15, 2002:

IV. Compact Accounting

E. The States agree to pursue in good faith, and in collaboration with the United States, system improvements in the Basin, including measures to improve the ability to utilize the water supply below Hardy, Nebraska on the main stem. The States also agree to undertake in collaboration with the United States a system operations study and after completion of the study the States will revisit the five-year running average set forth in Subsection IV.D.



From: [Swanda, Marvin R](#)
To: [Scott Ross](#)
Date: Friday, July 17, 2009 1:05:54 PM
Attachments: [Scanned Image from McCook BOR \(29.3 KB\).msg](#)

Scott

Here is a summary of purchases. Also attached number for 2008. It was in some of the arbitration documents.

Marv

2006

Frenchman Valley Irrigation District - sale of natural flow available at diversion dam (~8000 AF)--DNR paid \$400 k.

Riverside Irrigation District -sale of natural flow available at diversion dam (~2000 AF)--DNR and MRNRD paid \$50 k each. Total of \$100 k.

Bostwick Irrigation District in Nebraska - sale of storage water in Harlan County Lake (10,100 AF) and natural flow available at Guide Rock Diversion Dam (est. 5,000 AF)--DNR paid \$2.5 million for the water and \$64 k for their O&M payment for HCL.

In 2007 NRD's used bonds to pay for all water except NE Bostwick sold to DNR.

2007

Frenchman Valley Irrigation District - sale of natural flow available at diversion dam (~8000 plus AF)--RR Basin Coalition paid \$640 k

Riverside Irrigation District -sale of natural flow available at diversion dam (~2000 plus Natural flow)--RR Basin Coalition paid \$126 k

Bostwick Irrigation District in Nebraska - sale of storage water in Harlan County Lake (12,500 AF) and natural flow available at Guide Rock Diversion Dam (~5000 AF)--DNR paid \$5,583,500 plus \$64.5 k for O&M for HCL

Frenchman Cambridge Irrigation District - sale of natural flow and storage water from Harry Strunk Lake (26,000 AF)--RR Basin Coalition paid \$7,785,000 for the beneficial use of this water.

2008

FCID-Delayed the diversion of natural flows until 6/16/2008.--DNR paid \$294 k

FVID-DNR paid \$1 million

Riverside-DNR (unknown amount)



50TH ANNUAL MEETING OF THE
REPUBLICAN RIVER COMPACT ADMINISTRATION

AUGUST 12, 2010

9:15 A.M.

Burlington Community and Education Center
Burlington, Colorado



PANELS:
FOR COLORADO:
Commissioner Dick Wolfe
Mr. Peter Ampe
Ms. Megan Sullivan

FOR KANSAS:
Commissioner David Barfield
Mr. Burke Griggs
Mr. Chris Grunewald
Mr. Scott Ross
Mr. Chris Beightel

FOR NEBRASKA:
Commissioner Brian Dunnigan
Mr. Justin Lavene
Mr. Jim Schneider
Mr. Tom O'Connor

1 Department of Agriculture. And to my left is Scott
2 Ross. He's water commissioner for our Stockton Field
3 Office that covers all of northwest Kansas, and he's our
4 engineering committee lead. And then Chris Beightel is
5 our program manager for Water Management Services.

6 COMMISSIONER WOLFE: Commissioner?

7 COMMISSIONER DUNNIGAN: Thank you,
8 Commissioner Wolfe.

9 My name is Brian Dunnigan, and I'm the
10 director of the Nebraska Department of Natural
11 Resources.

12 And with me at the table today from
13 Nebraska, to my immediate left, Justin Lavene from the
14 attorney general's office; Jim Schneider, deputy
15 director; and Tom O'Connor.

16 Thank you.

17 COMMISSIONER WOLFE: Thank you.

18 Just a couple other procedural things.

19 There's copies of the agenda on the table when you came
20 in. If you didn't get one, they should be back there.
21 And there's refreshments in the back, some doughnuts and
22 coffee you're welcome to, so please help yourself to
23 those. And if you haven't found the restrooms already,
24 you go out these doors here, go down to your left and
25 again to the left, down to the next hallway and those

1 PROCEEDINGS

2 * * *

3 COMMISSIONER WOLFE: Good morning,
4 everyone. I'm Dick Wolfe, State Engineer for Colorado
5 and Compact Commissioner for Colorado for the Republican
6 River Compact Administration. Welcome to Burlington.

7 At this time, I'd like to introduce some of
8 the staff members here at the table that are from
9 Colorado with me. To my immediate right is Mr. Peter
10 Ampe. He's First Assistant Attorney General at the
11 Colorado State Attorney General's Office. And to my
12 left is Megan Sullivan, who is the engineer advisor for
13 Colorado.

14 David, do you want to go ahead and
15 introduce your staff here at the table for Kansas?

16 COMMISSIONER BARFIELD: Yes. Thank you,
17 Dick.

18 Again, thank you for hosting the meeting.
19 With me -- my name, for the record, is Dave Barfield.
20 I'm chief engineer for the Kansas Division of Water
21 Resources and Commissioner for the State of Kansas to
22 the Administration.

23 At the table here to my right is Chris
24 Grunewald, attorney with the -- for the Kansas Attorney
25 General's Office. Burke Griggs, an attorney with the

1 will be there.

2 We also have a court reporter here today
3 recording this for transcription. And as we go through
4 and make introductions, I'm going to, at this next step,
5 allow folks in the audience to introduce themselves.
6 And we'll pass around the mike, and so we'll make sure
7 that the court reporter hears those as well.

8 So my deputy, Mike Sullivan, over here to
9 the left, is here with me as well. And we're going to
10 start there, and we'll just pass this mike around so we
11 can hear everyone.

12 So, Mike, take it away.

13 MR. SULLIVAN: I'm Mike Sullivan with the
14 Colorado Division of Water Resources.

15 MR. MILLER: John Miller with the U.S.
16 Geological Survey out of North Platte, Nebraska.

17 MR. BOOK: Dale Book, consultant for the
18 State of Kansas.

19 MR. PERKINS: Sam Perkins, Division of Water
20 Resources, Kansas.

21 MR. KESTER: Paul Kester, Department of
22 Natural Resources, Nebraska.

23 MR. STANTON: Shane Stanton, and I'm a
24 field office manager for the State of Nebraska in
25 Cambridge.

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1 MR. BRADLEY: Jesse Bradley with the
2 Nebraska Department of Natural Resources.
3 MR. KEPLER: Jason Kepler with the Nebraska
4 Department of Natural Resources.
5 MR. EDGERTON: Brad Edgerton. I'm manager
6 of Frenchman-Cambridge Irrigation District.
7 MR. CLEMENTS: Mike Clements, manager, Lower
8 Republican NRD in Alma, Nebraska.
9 MR. CRAMER: Dale Cramer, former president
10 of Frenchman-Cambridge Irrigation District.
11 MR. DELKA: Mike Delka, manager of the
12 Bostwick Irrigation District in Nebraska.
13 MS. JURICEK: Chelsea Juricek, the Stockton
14 Field Office, for Kansas Division of Water Resources.
15 MR. VAN NOSTRAND: John Van Nostrand,
16 manager of the Burlington Record.
17 MR. MURPHY: Stan Murphy, the general
18 manager for the Republican River Water Conservation
19 District in Colorado.
20 MR. GUENTHNER: Scott Guentner with the
21 Bureau of Reclamation out of our regional office in
22 Billings.
23 MR. ERGER: Patrick Erger from the Bureau
24 of Reclamation out of the Billings office in the
25 regional office.

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1 MR. SWANDA: Marv Swanda with the Bureau of
2 Reclamation out of the McCook Field Office, McCook,
3 Nebraska.
4 MR. THOMPSON: Aaron Thompson, the area
5 manager for the Bureau of Reclamation Nebraska-Kansas
6 Office.
7 MR. SMITH: Dan Smith, manager of Middle
8 Republican Natural Resources District, in Curtis,
9 Nebraska.
10 MR. FANNING: Jasper Fanning, manager of the
11 Upper Republican Natural Resources District.
12 MR. PARKER: Edward Parker, with the Corps
13 of Engineers at Kansas City.
14 MR. EISENACH: Bob Eisenach, board member
15 of Hitchcock and Red Willow County Irrigation District.
16 MR. KOTSCHWAR: Jerry Kotschwar, Frenchman
17 Valley Irrigation District.
18 MR. ALBERT: Kenneth Albert, the director
19 of Frenchman Valley Irrigation District in Culbertson,
20 Nebraska.
21 MR. FELKER: Don Felker, manager of
22 Frenchman Valley/H&RW, Nebraska.
23 MR. KEELER: Dave Keeler, Republican River
24 in Colorado.
25 MR. RIDNOUR: Devin Ridnour, Republican

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1 River in Colorado.
2 MS. DANIEL: Deb Daniel, Plains and East
3 Cheyenne Ground Water Districts in Colorado.
4 MR. DINNEL: Dirk Dinnel, assistant
5 manager, Upper Republican NRD.
6 MR. RILEY: Tom Riley with the Flatwater
7 Group.
8 MR. KOELLIKER: Jim Koelliker, Kansas State
9 University, Manhattan.
10 MR. MARTIN: I'm Derrel Martin, University
11 of Nebraska at Lincoln.
12 MS. HOMM: Diane Homm, the Homm Ranch.
13 MR. BLANCA: I'm Don Blanca. I'm outside
14 legal counsel for Nebraska.
15 MR. POWERS: Marcus Powers, Nebraska
16 Attorney General's Office.
17 MS. BERNHARDT: Autumn Bernhardt, Colorado
18 Attorney General's Office.
19 MR. SULLIVAN: In the back, which helped us
20 put this meeting together, is Katie Radke with the
21 Colorado Division of Water Resources.
22 COMMISSIONER WOLFE: Thank you all.
23 Also, too, to help us out and also help the
24 reporter, make sure you've signed in the sign-in sheet.
25 If you haven't done that, if you'll make sure you get

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1 that signed in before you leave today, we would
2 appreciate it.
3 At this time, we're going to move on to
4 Agenda Item 3 -- excuse me, 2. We do have a couple of
5 modifications to the agenda. The first one is, on
6 Agenda Item 3, instead of approval of the previous
7 annual and special meeting reports, that will just be a
8 status.
9 The other addition to the agenda will be
10 under Item 8, Subitem (c). This is an addition, and
11 this will be a motion to dissolve the ad hoc legal
12 committee.
13 Commissioners, are there any other
14 amendments to the agenda at this time?
15 COMMISSIONER BARFIELD: Well, I guess I
16 would move that we adopt the agenda as you've
17 recommended we amend.
18 COMMISSIONER DUNNIGAN: Second.
19 COMMISSIONER WOLFE: All right. All those
20 in favor signify by saying aye.
21 COMMISSIONER DUNNIGAN: Aye.
22 COMMISSIONER BARFIELD: Aye.
23 COMMISSIONER WOLFE: Motion approved.
24 All right. We're on to Agenda Item No. 3.
25 This in regards to the status of the previous annual and

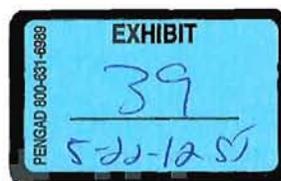
2010 NEBRASKA REPORT
for the
Republican River Compact Administration
August 12, 2010

I am pleased again this year to inform all of you that the State of Nebraska is in compliance with the Republican River Compact. Using current accounting procedures, Nebraska has a positive five-year average for the period ending in 2009. Based on preliminary estimates, it appears Nebraska will again be in compliance for the five-year compliance period ending in 2010. This is a testament to the work conducted to date in partnership with Nebraska's Natural Resources Districts, its surface water users and the people of the Republican River Basin.

In the future, Nebraska will continue to remain in compliance with the Republican River Compact. The primary NRDs, in partnership with the Department of Natural Resources, have revised the Integrated Management Plans in place for two and a half years. These IMPs are working. Among other things, the IMPs clearly state that each of the NRDs cannot deplete more than their share of the water of the Basin. This is not merely a goal, but rather a requirement of each plan.

I have previously stated "the Department and the Natural Resources Districts feel that it is important to investigate other options and further regulations that can be incorporated into future plans addressing water short years." In the first week of August, the State of Nebraska along with the Upper and Middle Republican Natural Resources Districts successfully adopted revisions to the existing Integrated Management Plans. These revisions address the concerns of long term compliance brought up during the 2008 arbitration. The revised plans now contain an in-depth monitoring plan, including a comprehensive forecasting mechanism that now allows Nebraska to look ahead and anticipate compliance issues, rather than waiting until six months after a year is over to see the results of Compact accounting. This forecast is designed to predict the compliance outcome for Nebraska if dry conditions are experienced in the upcoming year, and accurately predicts when those potential dry conditions would require additional actions by Nebraska to remain in compliance. The revised plans contain a detailed description of the triggers that will indicate when additional management actions are needed. The responsibility for the needed management actions depends on the current situation in each NRD, and those NRDs with a share in any projected shortfall will be required to implement the necessary controls that will ensure Nebraska's compliance in dry periods. Finally, the plans also provide for an occupation tax in these NRDs and the additional framework for Nebraska to continue to manage consumptive use over the long term to meet compact compliance.

During the first half of this year, the States of Colorado, Kansas, and Nebraska spent considerable time and effort to address concerns related to the Colorado Compliance Pipeline and Nebraska's Crediting Issue through the arbitration process. We consider both of these issues to be of importance and look forward to their resolution. The Department has also held recent meetings with the Bureau of Reclamation to address their misunderstandings of the revised IMPs, and we have made considerable progress in the last two weeks.



In order for Nebraska to utilize its Compact allocation to the benefit of the entire basin, we will need to work closely with both surface water and groundwater users to develop conjunctive management strategies that benefit all water users. We will continue to see improvements over time as the IMPs continue to take hold. It is our belief that a healthy surface water system will contribute to Nebraska's ability to comply with the Compact. Conjunctive management studies that identify the best uses of those streamflow supplies during wet and dry conditions will further enhance Nebraska's ability to fully utilize its Compact allocation while also continuing to ensure Compact compliance. The natural resources districts, the irrigation districts, and their respective boards, and the Bureau of Reclamation will play an important role in implementing these strategies in the basin.

The future also holds continuing participation in the Conservation Reserve Enhancement Program and the Environmental Quality Incentives Program and other incentive based management strategies. Nebraska continues to explore stream augmentation options. Vegetation management has increased streamflow and the capacity of the stream channel. Nebraska will continue to take an active role in the Engineering Committee, and will always work with the other states to improve existing accounting methods and ensure they accurately reflect water use in the Basin.

In closing, I wish to assure you all, as well as my counterparts from our neighboring states, that Nebraska will continue to comply with the Republican River Compact. The State will continue to evaluate needs of the basin and make changes as necessary to stay in compliance, in a spirit of openness, transparency, and partnership. We expect to continue to work with all stakeholders in the basin, including the other states, the NRDs, the surface water districts and individual users, and the Bureau of Reclamation. Non-compliance is not an option for the State of Nebraska.

Statement of the Bureau of Reclamation
Nebraska-Kansas Area Office
Aaron M. Thompson, Area Manager

Regarding Proposed Integrated Management Plan for the
Middle Republican Natural Resources District

June 8, 2010 /

INTRODUCTION

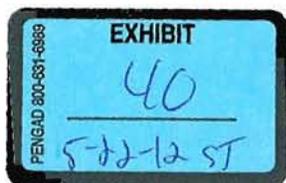
The Bureau of Reclamation (Reclamation) recognizes the appropriate role of the State of Nebraska to establish and enforce water policy. The current State water policy of developing and implementing Integrated Management Plans (IMP) is a step in the right direction. However, Reclamation is concerned that the IMP proposed by the State and the Middle Republican Natural Resource District (MRNRD) is inadequate. It fails to protect Reclamation's senior water rights from direct and substantial groundwater development of the hydrologically connected waters of the Republican River Basin (Basin) that occurred following approval of the Compact and subsequent investment of infrastructure. ✓

Reclamation contends the State water policy that has evolved following approval of the Republican River Compact (Compact) ignores the physical reality of the hydrological connection between surface and groundwater sources. The policy separation between surface and ground water has led to an overdevelopment of the finite water resource in the Republican River Basin. As a result, the investment of the United States in the development of infrastructure is in jeopardy. The irrigation, recreation, and fish and wildlife benefits are currently below their potential as envisioned and authorized by Congress. The taxpayers of the United States have an expectation that their investment will be protected, which includes water rights held by the United States. ✓

Reclamation offers to assist both the State and NRD in developing a long term solution to the issue of Compact compliance that recognizes the hydrologic connection between surface and groundwater, and protects senior water rights. A potential option is the establishment of a water market as exists in other Reclamation states, such as the system that presently exists in the South Platte River Basin in Colorado. ✓

COMPACT HISTORY

During the late 1930s when Reclamation was initially investigating the water projects in the Basin, we recognized the first step to Federal water development was negotiation of a compact between Nebraska, Kansas, and Colorado allocating water between the states. This was needed to prevent conflict between the states and to insure long term project feasibility to protect the large Federal investment. Reclamation requested that the states enter into negotiations to complete this necessary step. Reclamation stated in a 1940 ✓



Attachment A

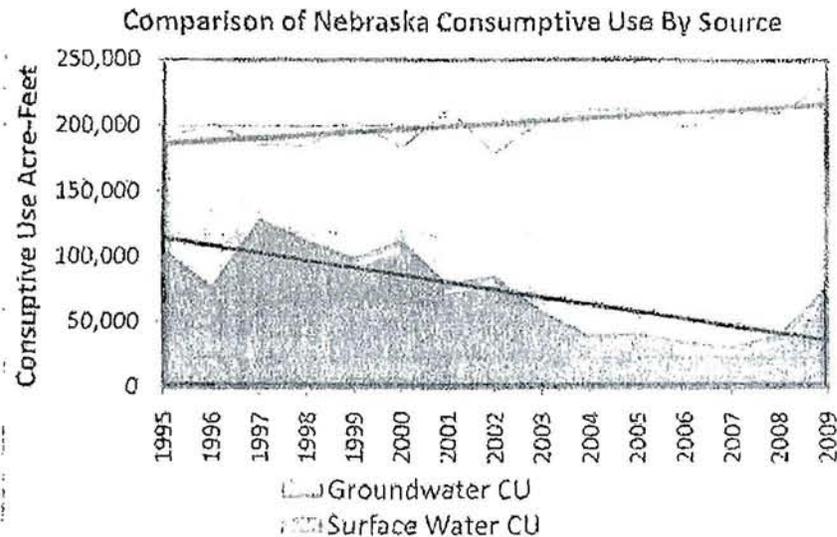
KS000803

Reconnaissance Report on the Basin (Project Investigation Report No. 41): "To avoid expensive litigation as a result of possible conflicting uses of water in the various states, further developments for irrigation should be preceded by a three-state compact or similar agreement on use of water." This report was one of many sources of information used by the three states to develop the Compact. Reclamation also assisted the states in the Compact negotiations by preparing hydrology analysis for the Basin and sharing Reclamation's preliminary water development plans with each of the states. The first attempt to adopt the Compact by the states was vetoed by President Roosevelt because the United States did not participate in the negotiations of the Compact. After participation by the United States, the Compact was renegotiated and revised to include Articles 10 and 11. The renegotiated Compact was signed by the states and the representative of the United States on December 31, 1942. Ratification of the Compact by the States and the U.S. Congress followed in 1943. ✓

After the Compact was finalized, this water allocation became the framework for the final planning and design of a system of Federal reservoir and irrigation projects that would assist each of the states in developing their allocated share of the Republican River. Reclamation believed by acquiring necessary state water rights and designing its projects within each state's allocated share of the water, the water supply for these Federal projects would be protected against future water development. Between the late 1940s and 1960s eight Federal dams and reservoirs were constructed in the Basin above the Nebraska-Kansas stateline. Reclamation entered into repayment or water service contracts with each of its irrigation districts in the Basin to provide for repayment of the irrigation portion of construction and their associated operation, maintenance, and replacement (OM&R) costs for these projects. This was done with the expectation that the irrigation districts would be able to repay their share of the project costs, protecting the invested interest of the taxpayers of the United States. ✓

COMPACT ACCOUNTING

From 2003 through 2006, Nebraska's allocation averaged 205,000 acre-feet and Nebraska's use averaged 250,000 acre-feet, each year resulting in computed beneficial consumptive use exceeding Nebraska's allocation. During this period Nebraska ground water pumping caused nearly 80% of the ground water depletions to the streamflows in the basin. The following graph shows Nebraska's ground water and surface water consumptive use since 1995. Statistical trend lines have been added to the graph to show how these consumptive uses have changed over time. Ground water consumptive use has gradually increased over time, while there has been a sharp decline in surface water consumptive use. ✓



Reclamation testified at each of the IMP hearings that surface water supplies in the Basin began to decline significantly in the late 1960s, right at the time ground water development in the Basin was expanding at a rapid rate. The use of surface water is not the reason Nebraska has failed to be in compliance with the Compact. Surface water use has decreased over time. Because of the current level of ground water use in the basin, ground water depletions have resulted in significant Compact compliance deficits for Nebraska. This draft IMP continues to allow for the unreasonable use of surface water supplies to make up for deficits caused by years of ground water overuse. In water-short years, surface water users experience significant water shortages because of imposed reductions in surface water supplies while ground water users have the capability to pump sufficient ground water to meet most of their irrigation demands. As a result, ground water depletions to surface flows have continued to gradually increase while surface water depletions continue to decline.

2009 ARBITRATION

Reclamation testified at the Republican River Compact Arbitration hearings in April 2009 and stated our concern that without additional limits and controls on ground water use the surface water supplies in the Basin will continue to decline making it more difficult for Nebraska to meet Compact compliance in the long term. Reclamation concurs with Arbitrator Dreher's decision that "...Nebraska's current IMPs are inadequate to ensure compliance with the Compact during prolonged dry years" and "Nebraska and the NRDs should make further reductions in consumptive ground water withdrawals beyond what's required in the current IMPs." It is our position that ground water consumptive use must be reduced to a level that will allow base flows to recover to

an extent that will allow Nebraska to consistently comply with the Compact in both the near term and long term. This is the only way Nebraska can meet the IMP goal of "sustaining a balance between water uses and water supplies . . ." Likewise, Arbitrator Dreher concluded in his Final Decision that "Nebraska's problem in complying with the Compact is groundwater CBCU, not surface water CBCU." As long as ground water depletions continue to increase, there will be less and less surface water supplies available to offset the deficits caused from ground water pumping. ✓

CONCERNS AND EXPECTATIONS

Reclamation is very concerned about Nebraska's failure to meet Compact compliance since compliance accounting was reinstated in 2003. Reclamation is even more concerned about the continuing depletion of inflows to Federal reservoirs. Federal projects were constructed based on the concept that project surface water rights would be protected. The trend of declining ground water levels will result in continuing stream flow depletions. This draft IMP fails to address impacts from past ground water use and future ground water declines that will cause direct and substantial depletions in stream flows. ✓

Reduced surface water supplies have caused Federal project water deliveries, throughout the Basin, to decline during the last 40 years. Ground water pumping in the MRNRD directly affects the water supply for several canals associated with the Federal projects in the Basin. A decline of return flows from these canals has reduced supplies to downstream Federal projects as well. According to NE Stat. 46-715, the IMP should include clear goals and objectives with the purpose of sustaining the balance between water uses and water supplies for both the near term and the long term. Reclamation is very concerned with this balance in the Basin as it relates to surface water supplies for existing surface water uses. ✓

Reclamation expects the water rights associated with the authorized Federal multipurpose projects in the Basin be protected by the State of Nebraska and the NRDs. Reclamation expects to continue to operate the Federal projects for their authorized purposes. Reducing ground water depletions is the only way to gradually allow the streamflows to recover, provide equity among water users, and assist Nebraska in achieving long term Compact compliance. ✓

SPECIFIC COMMENTS

1. Goal 4 – "reserve any streamflow available from regulation, incentive programs, and purchased or leased surface water required to maintain compact compliance from any use that would negate the benefit of such regulations or programs" Since any water that appears as streamflow is subject to storage and surface water use in accordance with Nebraska state statutes, how does the state intend to meet this goal? ✓

2. Goal 5 - "protect ground water and surface water users... from stream flow depletions caused by ground water or surface water uses began after the date the river basin was designated as fully appropriated." This goal is not being met and will not be met by the proposed IMP. Records indicate depletions from ground water have increased since 2004 and ground water levels are continuing to decline. ✓
3. The IMP requires a 20% reduction in pumping to average a level no greater than 247,580 acre-feet but then allows higher pumping in any single year. Allowing higher pumping levels in "water short" years works against compliance and equity between surface water users and ground water users.
4. The MRNRD's current pumping volumes are near a 20% reduction from the '98-'02 baseline volumes discussed in the IMP. The '98-'02 baseline is not representative of average pumping as this was a dry period when pumping rates were high. Reductions need to be higher to improve surface water supplies and achieve long-term compliance. Reducing allocations by more than 20% will provide a cushion to offset deficits in dry or water short years. This would reduce the need for other users to unfairly make up the deficit. ✓
5. The proposed IMP does not address improving long-term surface water flows nor make up existing deficits. Improved surface water flows will be needed to achieve long-term compliance. ✓
6. The Surface Water Controls as described in section VIII.F are vague and do not describe the intent of "Compact Call." ✓
7. The "Compact Call Year" is not defined in the draft IMP. Also a number of the terms under the Compact Call Year evaluation are not clear.
8. The IMP indicates that a "Compact Call" will be placed on the river at Guide Rock or Hardy on all natural flow and storage permits. This call would appear to prevent storing water in Harlan County Lake decreasing the water supply for the Bostwick Division. This call would also appear to prevent the diversion of natural flow into the Courtland Canal. Is this the intent of the Compact Call? This could also increase the number of years that are designated as "water-short years" under the terms of the Final Settlement Stipulation. ✓
9. Closing all natural flow rights and storage rights while not curtailing all ground water wells hydrologically connected to the streams (as defined by the FSS) is discriminatory and does not provide equity between water users (a primary goal of the IMP). ?
10. The IMP states that a "Compact Call" is on until such time that administration is no longer needed. The IMP is unclear whether any ground water use in the Rapid Response Area will occur during a "Compact Call Year". Will ground water use remain off during the entire year when a "Compact Call" has been placed? ✓
11. The IMP does not define "allowable surface flow depletions." A better understanding of the surface water user's share of allowable depletions is needed. Surface water supplies are already reduced during "water short" years. Ground water consumptive use has remained the same or increased and under the IMP a higher volume of ground water pumping is allowed in years with below average ✓

precipitation. This is completely contrary to providing equity between surface water users and ground water users.

CONCLUSION

Reclamation is supportive with Nebraska's effort to comply with the Compact. However, a plan that essentially curtails all surface water use and continues to allow ground water use and ground water mining to occur in the Basin is unreasonable and not acceptable. This is not consistent with Nebraska Statute 46-715 as surface water users are not being provided equal protection among all water users. Reclamation views our Federal water rights as property rights that must be provided equal protection. The fiscal investment of the taxpayers of the United States must also be protected. In doing so, the IMPs should not ignore the physical reality that ground water and surface water are hydrologically connected and the administration of the water supply in the basin should be consistent and equitable for all water users. ✓

Additionally, the proposed revisions to the IMP do not allow Reclamation to operate as authorized by the U.S Congress. If adopted, this IMP would prevent Reclamation from performing its contractual obligations of delivering water to irrigation districts in "Compact Call" years. Federal projects were specifically designed to be in compliance with the Compact and our use has not increased over time but decreased as a result of uncontrolled depletions upstream of our reservoirs. Inadequate water supplies, because of depleted stream flows in the MRNRD, adversely affect surface irrigators who were planning on supplies expected after the signing of the Compact. Depleted surface water deliveries directly and substantially reduce the economic benefits provided by the Federal projects. ✓

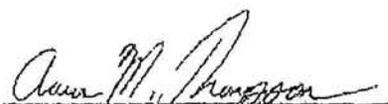
Reclamation needs a better understanding on how the surface water controls of this proposed IMP will work. If the state recognizes the administration of water in the basin for Compact compliance as a "beneficial use" then the senior water right holders in the basin should be compensated. Bypassing inflows from upstream reservoirs to store water in Harlan County Lake is, in our view, a "selective call". Two of Reclamation's reservoirs upstream are senior to Harlan County Lake and the other reservoirs have an equal water right priority to that of Harlan County Lake. Additionally, if all natural flow permits are closed, as indicated in the proposed IMP, what authority will be used to supply water to the Courtland Canal and Lovewell Reservoir during "Compact Call" years? If the water cannot be stored or diverted as indicated in this IMP, then the water flowing through our reservoirs is no longer project water. Reclamation does not currently have authority to transfer non-project water through Courtland Canal for a non-project use. Finally, Reclamation is concerned that "Compact Call" years could result in surface water users losing irrigation supplies for multiple years as the reservoirs ability to store water is reduced. The financial viability of our irrigation districts, which supplies water to approximately 700 users in Nebraska, would be in jeopardy if this would occur. This is unreasonable. Other impacts coupled with reduced reservoir levels will occur to recreational and fish and wildlife benefits associated with these projects. It is our understanding that DNR predicts surface water users will be curtailed 2 out of 10 years. ✓

Please provide us with the modeling and supporting data showing the frequency that surface water curtailments will occur.

As an alternative, Reclamation believes the water supplies of the basin should be managed fairly across the basin for all water users. A long term conjunctive management approach should be developed that allocates consumptive use in an equitable manner across the basin. This approach would allow water to be marketed between all users based on consumptive use. Surface water should be provided with an equitable share of Nebraska's consumptive use during "water short" years. We again want to stress that the earliest water rights in the basin are the surface water rights that are currently not being provided "equity among water users" and if this IMP is adopted, will not be in the future. Sustained surface water supplies are critical for project viability and Nebraska's ability to be in compliance in the long term. ?

In conclusion, Reclamation is willing to continue working with all the NRDs and the State as they seek compliance with the Compact. The IMP should recognize and protect the investment of the United States' taxpayers made decades ago. To ensure compliance in the long term, Reclamation believes there must be a healthy surface water component in the Basin. To accomplish this we believe reduction in ground water pumping must be significantly more than currently provided in the IMP to allow stream flows to begin to recover. Ground water pumping and other upstream uses are progressively depleting reservoir inflow. ✓

Reclamation is hopeful as you finalize the IMP that you will study the presented testimony and respond to our specific questions and concerns we have presented in this statement.


Aaron M. Thompson, Area Manager

