

Message

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Ross, Scott

From: Barfield, Dave
Sent: Wednesday, October 18, 2006 12:14 AM
To: Pope, David L.
Cc: Austin, George; Ross, Scott
Subject: FW: questions

David,

I know time will be short to dialogue on this tomorrow. So to facilitate your review and comment, I have drafted responses below. I will need to decide what of this to move to my presentation and what to leave for Q & A. Due to the late hour, I have not edited this much.

David

From: Roger Harmon [mailto:harmon@chase3000.com]
Sent: Tuesday, October 17, 2006 7:57 AM
To: Barfield, Dave
Subject: FW: questions

Dear Dave,

As of Tuesday Morning the Water Claim group is the only one that has gotten there questions back to me! So I submit these to you for your consideration.

Sincerely,

Roger Harmon
308-883-8090

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

From: Steve Smith [mailto:steve@waterclaim.org]
Sent: Thursday, October 05, 2006 8:34 PM
To: 'Roger Harmon'
Subject: questions

Some questions for your consideration. Remove whatever you like. Obviously I don't agree with all of them but many are common thoughts. There are too many for him to address all. So choose what you think is the most important. Since I think you will have a lot of people there, I encourage you to have some volunteers that can collect written questions for you to review and pass on the most important for him to respond to.

Questions for David Barfield

Most residents of the area know that Nebraska will fail to comply with the Agreement. They do not need a repetition of what the problem is but instead want to hear what must be done to resolve the problem.

1. Specifically what does Kansas expect Nebraska to do? Does Kansas want wells to be shut off, allocations to be reduced, or some other option. Does Kansas care how Nebraska complies?

Kansas expects NE to get in compliance. NE should find the way that has the least economic impact or makes the most sense to NE. But it needs to get the job done and not all actions are equal.

Targeted retirements are probably the most effective means, as you are attempting to do. NE will see the benefit of these

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actions increase over the next few years since there are lag effects in the system that keeps the benefits from showing up in the first year.

Kansas has been disappointed that NE was slow to implement its actions and allowed too much additional development that really is complicating matters. The reductions under CREP & EQUIP are just covering the development NE NRD allowed post-settlement. So they are not going to result in compliance.

Allocation reductions can be effective means to move toward compliance as well. Irrigation efficient improvements will NOT necessarily help much.

Beyond reducing your base acres, it looks like you will need use extraordinary measures during water short years.

2. The DNR and the NRDs are telling us that Kansas understands we have done a lot, CREP, EQIP, moratoriums, allocations, surface water purchases, and then there is the drought and as a result Kansas will have mercy and will probably not use the legal system to force the issue as long as we continue to try. Is this true?

I can't predict the future, but I think it is unwise to expect that KS will overlook violations of the settlement. KS must press for compliance if the settlement is to mean anything. KS is being injured significantly and there is no relief in sight. We must press for CO and NE to continue to reduce use until they are within their share.

3. Our officials and representatives are telling us that we shouldn't worry. There is no need to sell ground or to panic. That what we are doing is enough. We would love to have you confirm that.

See above. I can confirm that what you are doing is not enough for water short year conditions.

4. At public information meetings and at hearings in 2005 and 2006, the DNR told us that if we would accept moratoriums, CREP and a 5% reduction in usage that the problem would be resolved and everything would be ok. Things are not looking ok right now.

I don't think we have seen the full benefit of your acreage reductions yet but as short of NE has been of compliance, I think it is safe to say that what you have done to date it is not enough for water short year conditions.

5. The drought is the cause of the problem. It will rain again and when it does don't you think the streams will flow again?

The drought is complicating the problem, no doubt. Water short year compliance is more difficult but it is also the time when we need the water most. The settlement says in extended dry periods, each of the State has to cut back to the smaller supplies. Otherwise, the downstream state is shorted.

5. There are a lot of trees on the river that didn't used to be there. If we control the trees, won't the problem go away?

Trees do use water. They are NOT counted against NE as use. Reducing tree water use could result in more water in the streams and thus more allocation. I would be surprised if it will be a significant or long-standing benefit unless NE takes very aggressive action AND has an on-going program of control.

6. Can we just write Kansas a check for any overages?

Damages will likely be component of a remedy by the Court. But as far as I can see, there is no end in sight for NE's violations. I doubt the Court will permit on-going violations.

7. When Nebraska fails to honor the agreement, will Kansas seek arbitration?

Yes.

8. Will Kansas ask for a River Master to be appointed to manage the water?

I can't answer that. If violations are shown, we will expect and I believe the Court will require, a realistic plan that brings NE in compliance.

9. Given the severity of the drought, is it reasonable to expect Nebraska to comply?

The Settlement was written for dry periods and wet periods and everything in between. It includes "water-short year provisions" for times such as this. It is a drought in KS as well as we need our share of the water. Your taking more

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than your share has deprived us of our share.

10. Over what period of time does Kansas expect Nebraska to comply? The first deadline is at the end of 2007.

The settlement requires compliance starting over the period 2003 -2007 for the 5 year running sums and for 2005-2006 for the first water short year test.

11. Even if we shut off all of the wells, Nebraska will not be in compliance for at least four years so what good does it do to reduce allocations by 15%.

The sooner you implement measures needed to get to compliance, the sooner you will be in compliance and the less your violations will be. To put off action is to create more and more problems. There is no end to the water-short year conditions in sight.

12. What damages are there? You don't use or even need all of the water you get? So even if you win, what do we owe you? You haven't been hurt.

The answers are in my presentation. I will likely need to add a statement that we are not using our allocation as we are not getting it due to overuse by NE and CO.

13. The South Fork of the Republican River, Sappa, Beaver Creek, and Prairie Dog Creek flowing from Kansas into Nebraska have been dried up by Kansas. Why doesn't Kansas have to make reductions?

We stopped our development in 1984-5 to insure that our use was within our allocation. SF is impacted by CO overuse. Other NW KS streams were intermittent in dry periods historically and thus the current condition is not that unusual.

14. Allocations in the Basin range from 13.5 inches to 8 inches. Does Kansas expect Nebraska to reduce allocations even more?

KS expects NE to get in compliance so we get our water, whatever it takes.

15. About 80,000 acres have been retired via CREP and EQIP? Does Kansas want Nebraska to eliminate more acres and if so how many more?

These retirements just cover the substantial development that NE NRD's allowed post-settlement. So you will likely need to do more. I don't have the numbers; you will need to talk to DNR.

16. The Upper Republican NRD has had moratoriums and allocations for many years. Hasn't the URNRD done all that it should? Are you expecting the URNRD to make additional cuts? Isn't the problem all caused by the new acres in the Middle and the Lower?

The Middle and esp. the Lower have complicated NE's compliance problem by allowing so much additional development. NE will have to decide how the additional cuts should be implemented. I realize UR has done more but it also has a bigger long term problem and may need to do more in any case.

NE short term compliance will need to target quick response areas, some of which is in the UR.

17. If you could write Nebraska water policy, what would you do?

Not for me to say. [But if you press me, I would say, I would have given wells after 2000 and esp. after 2002 a much smaller allocation. I would keep reducing the base acres and find a management strategy for water short year conditions]

18. We sell you too much corn, you won't kill your source of corn will you?

No comment.

19. It is my understanding that Kansas has to go to arbitration first. Will you do that? What will you ask the arbiter to do?

Assuming NE is found to be out of compliance, we will go through the process required by the Settlement. KS would likely want damages as we have been injured and want a realistic plan for NE get in compliance. If we don't get this out of arbitration, we will likely need to petition the Court to find a solution to these things.

20. Hasn't Nebraska done enough? Will you force us to do more?

No, NE has not done enough for water short periods. We will continue to work toward all states getting in compliance.

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21. Damn farmers, if they would just stop wasting the water, letting their pivots run after it rains and watering the ditches and road, there wouldn't be a problem. We should just reduce usage to 6 inches and quit whining about it. I had to lower my house well and it is all the fault of the rich farmer, who is going to pay for my cost? What are we going to do when we run out of water? Greedy farmers are just stealing the future of our kids. They should be ashamed of themselves. I hope you break them.

No comment.

22. If we had just dealt with this 20 years ago like we should have there wouldn't be a problem. But you can't trust local people to do what is right. We need the State to take control and force the wells to be shut off.

We have been calling on NE to control its development for 20 years and things would have been much simpler if you had. Local control of this type of resource is difficult. The complex relationship of surface water and groundwater make it even more complicated.

23. Conservation is a big part of the problem. A Kansas State study said that terraces, retention ponds, blocked canyons, and minimum till are causing most of the decline? Do you want us to remove those things?

See what I drafted in the script. I believe the KSU study was in another basin. CP are having an impact, more in some basins than others. CP mean less runoff but help recharge to the groundwater system. They bring with them smaller allocations. I don't seem removing CP as a realistic remedy to NE's overuse of its share of the remaining water supply.

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Ross, Scott

From: Barfield, Dave
Sent: Tuesday, October 17, 2006 9:39 AM
To: Pope, David L.; Taylor, Lisa; Austin, George; Ross, Scott; Billinger, Mark
Cc: Rolfs, Lee
Subject: FW: questions (for Imperial) from WaterClaim

David and others,

Roger told me he would try to give me a heads up about questions that might be asked. Below is what he sent me from Waterclaim. Quite the list.

I have not had a chance to review them but none are too surprising.

Talk to you when you get here.

David

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