

## Talking Points for August 13, 2008, RRCA Annual Meeting

- Kansas continues to **appreciate efforts** made by Colorado and Nebraska towards compliance.
- Yet, Nebraska and Colorado have been clearly on notice as to nature of their Compact obligations since the end of 2002 when the Final Settlement Stipulation was signed. The Stipulation recognized that it would take time for Nebraska and Colorado to come into compliance. Thus the FSS included an implementation schedule (Appendix B) that delayed the first possible water short compliance period until 2005-2006, and the end of the first normal year compliance until 2007, based on the 5-year period of 2003-2007.
- While the FSS gave the States a great deal of latitude of how to come into compliance, compliance is not optional; and the tests for compliance are very clear.
- The accountings completed for 2003, 2004, and 2005 have shown both NE and CO used more than their allocation for each of those individual years.
- While the EC has not agreed upon final numbers, but numbers for 2006 and 2007 clearly show there still is a problem. Cast the blame where you will, but the clear fact is that **Nebraska is out of compliance** for the first two tests of compliance under the water-short year tests for 2005-2006 and 2006-2007. Both Nebraska and Colorado are **out of compliance for the first 5-year test** of compliance test for 2003 through 2007. [I might note that Kansas' allocation has exceeded its consumptive use in all years from 2003-2007 and therefore Kansas is in compliance with its first five year test in Northwest Kansas.]
- Although some **limited progress** has been made by Nebraska and Colorado in reducing use, **consumptive use in both Nebraska and Colorado still significantly exceeds their allocations**. Kansas' calculations show that in the last five years that Nebraska's consumptive use exceeded its allocation by about 117,000 acre-feet and that Colorado was more than 52,000 acre-feet over its allocation. **Show graph of Allocation vs. use**. [Even under Nebraska's interpretation of disputed matters, the numbers still show that Nebraska's consumptive use has substantially exceeded its allocations for its first water-short-year tests and its first five year compliance test.]
- Nebraska failed its water-short year compliance check for years 2005 and 2006. **[show accounting page of results] For this period, Kansas calculations show that Nebraska used over 84,000 acre-feet more than its allocation above Guide Rock, creating a shortage of roughly the same amount to Kansas.**
- Due to Nebraska actions and some fortuitous rainfall events, Nebraska passed its water short year compliance test for the period 2006 and 2007. For this period, Kansas calculations show that Nebraska used 10,530 acre-feet less than its allocation above Guide Rock. For that Kansas is grateful.
- The fundamental problem causing Nebraska Compact violations is excessive groundwater use in Nebraska. According to Kansas estimates based on the EC data, consumptive use caused by groundwater pumping in 2006 in Nebraska was 198,412 acre-feet. Consumptive use caused by groundwater pumping in 2007 in

Nebraska was \_\_\_\_\_ acre-feet In contrast, Nebraska's surface water consumptive use was 34,599 acre-feet in 2006 and \_\_\_\_\_ acre-feet in 2007. (See bar chart). Groundwater depletions are the dominant CU by NE.

- [You might note that in the same table that reports Nebraska and Colorado overuse, Kansas is reported to have used significantly less than its allocation. [We don't have a graphic for this yet; I likely will skip this point] A significant portion of that allocation has not been physically available for Kansas to divert due to NE and CO overuse [Graph of Hardy + Courtland vs. allocation], and Kansas beneficial consumptive use of water passing the Hardy gage is not included in the Compact accounting.]
- As a result of Nebraska's overuse, Kansas has not received its water for the Kansas Bostwick Irrigation District and its mainstem users. All of the 40,000 irrigable acres of in Kansas Bostwick Irrigation District above Lovewell Reservoir have been significantly impacted. A base allocation in the District is 15 inches of water. The Upper District of approx 13,500 acres above Lovewell Reservoir received an average of about 3.8 inches of water in 2003, 7 inches in 2004, less than an inch in 2005; 2.7 inches of water in 2006; and \_\_\_\_\_ inches in 2007. [Graphic] The lower district of 26,000 acres received approx. half of its base allocation over these same years. Obviously, Kansas Bostwick has not had a full supply of water in four of the last five years. In four of the five years KBID would have used more water, if more water had been available. Most of the KBID lands do not have alternate water supplies from wells available.
- For that portion of the basin downstream of Hardy, there are numerous surface and groundwater users affected with the river being virtually dry until recently. At Concordia and Clay Center, the river has also been extremely low. [graph of Hardy flows during 2003 to current] This has meant a large number of surface water users and groundwater pumpers have been heavily regulated from 2003 through \_\_\_\_\_.
- The Settlement Stipulation was drafted to deal with the very real concern about shortages which had occurred in the past and it brought the expectation that things would be better. The Stipulation clearly deals with the entire range of water flows from wet to dry, and specifically with water short years. Kansas believes the Settlement Stipulation recognized drought and that the Compact was predicated on shared shortages of water supplies. All streamflow in the basin is allocated by the Compact. Excess uses in the upper part of the basin deprive users in the lower part of the basin of their rightful supply. Thus due to overuse in Nebraska and Colorado, Kansas has not gotten its equitable share of the waters of the Republican River Basin during the past four years of drought. **Drought is hard on everyone, but it has been especially hard on Kansas because Kansas was not even been able to obtain its equitable share of the reduced water supply that has been available in the basin during this drought from 2002 through 2006.. This is unacceptable and cannot continue.**
- Nebraska has and is taking some action to get into compliance. In letters dated April 25 and July 18, 2007, Nebraska advised Kansas as to the measures it was taking due to water-short year administration. In addition to reductions in

beneficial use through the use of CREP, EQIP, and NRD allocations, in 2007 Nebraska and the NRD's purchased additional stored water and natural flow to be made available to Kansas. If this practice continues into the future, Kansas suggests that a more collaborative approach be used, that involves both Kansas and KBID, to maximize the benefit to both states from the timing and management of this water.

- The preliminary accounting for 2007 shows that Nebraska's CU did not exceed its allocation for 2007, but there is no individual year accounting test under the FSS.
- Unrealistic plans will result in additional future violations and continued shortages to Kansas. As Nebraska considers alternatives for future action, I would offer the following:
  - Augmentation plans may be part of the solution, but, they must first be approved in advance by the RRCA. Under the FSS "Augmentation plans and related accounting procedures submitted under this Subsection III.B.1.k. shall be approved by the RRCA prior to implementation."
  - Removal of phreatophytes can be part of the solution, but I would urge caution in relying on this as a means to compliance. Most likely, Nebraska will only see small increases in the Computed Water Supply and Nebraska's allocation. Nebraska will receive an increased allocation for only a portion of the increased streamflow. That with a proportionate reduction in ET salvage, further decreases the benefit to Nebraska.
- It seems to Kansas that Nebraska does not have a realistic plan to come into compliance. For example:
  - Groundwater pumping is the primary cause of Nebraska's overuse of its Compact allocations. These depletions are growing each year. Any plan to come into compliance must contain significant restrictions on groundwater pumping. Nebraska must keep in mind how many wells were drilled and additional irrigated acreage developed after Kansas filed suit in 1998. Yet, even while NE is significantly out of compliance, additional groundwater restrictions do not appear to be part of the solutions being discussed in NE. Current NRD allocation's are not sufficient to bring Nebraska into compliance. **[See graph showing effect of NRD allocations, current compliance, and Kansas' proposal]**
  - [The RRCA groundwater model was developed by three of the best groundwater modelers in the United States—at least one from each state. It was approved by each modeler, each state's negotiating team, the Special Master and the United States Supreme Court. Despite criticism from some Nebraskans, Kansas is not aware of any problem with the model. [Nebraska has suggested a change in the approved accounting procedures and that requires approval of all 3 states. Kansas has analyzed Nebraska's request and sees no justification for it.]
  - Nebraska has also failed to comply with the terms of the FSS concerning timely production of data to the other two states. For example, Nebraska has failed to furnish to Kansas the data input files for the 2007 accounting. According to the FSS, the preliminary input files were due April 15, 2007 and the final input files due on July 15, 2007. To date neither of these

deadlines have been met by Nebraska. Compact business cannot be conducted on an orderly and timely basis when one or more states do not meet their required deadlines to produce data as required by the FSS. Nebraska has also failed to submit the following data in a timely manner: [See letter dated August \_\_\_, 2008, with a detailed listing of Nebraska's failures to provide data in a timely manner as required by the FSS, which I would like to be made a matter of record in this meeting and attached to the annual minutes.]

**In conclusion, Nebraska needs to do better.**

**Handouts**

- Graph of NE's and CO's allocations and consumptive use for 1995 through 2007
- Table of allocations and consumptive use by state for 2003 through 2007
- Table of water-short year allocations and CU for NE at Guide Rock for 2005-2006 and 2006-2007
- Graph of Nebraska surface water use versus Nebraska's groundwater use [maybe include CU by phreatophytes??]
- [See graph showing effect of NRD allocations, current compliance, and Kansas' proposal]
- Letter dated August \_\_\_, 2008, with an attached listing of Nebraska's failures to provided data requested by the FSS