

# Republican River Basin Compact Compliance Plan

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## **Introduction**

The Republican River Basin Compact Compliance Plan (“BCCP”) is developed to provide a Basin wide approach to a plan for the State of Nebraska’s maintaining compliance with the Republican River Compact and the United States Supreme Court approved Final Settlement Stipulation in *Kansas v. Nebraska*, No. 126 Original (“Final Settlement Stipulation”).

Using the BCCP as a guide, the four affected Basin Natural Resource Districts (“Basin NRDs”) will individually, along with the Nebraska Department of Natural Resources (“Department”) develop Joint Action Plans for integrated management of hydrologically connected surface water and ground water. The BCCP will provide an overall cohesive approach to management and administration while allowing each Joint Action Plan to tailor specific management objectives and tools to the conditions present in the particular Basin NRD.

The terms used in this BCCP shall be given the meaning defined in statute, rule and regulation, the Final Settlement Stipulation or their ordinary and customary meaning.

## **Background of Interstate Compact Dispute**

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact (hereinafter the “Compact”) with the approval of Congress. The Compact provided for equitable apportionment of the Republican River stream flows for beneficial consumptive use. In 1959 the first annual meeting of the Republican River Compact Commission (hereinafter the “RRCA”) was held. At that meeting, the RRCA began to discuss, among other things, how it should determine the annual virgin water supply, the annual allocations to the States and the States’ annual consumptive use. It was not until 1964, however, that the parties adopted formulas to make these determinations. The formulas that were adopted included the estimated impact of wells located in the alluvial valley of the river and tributaries. Non-alluvial wells were not considered

By the late 1980’s Kansas began to complain that Nebraska was consuming more water than was allocated to it in certain sub-basins. Kansas also complained that unlimited groundwater development in Nebraska’s portion of the basin was resulting and was likely to continue to result in Kansas not receiving its full allocation. Nebraska responded to the Kansas complaints by noting that Kansas generally received from Nebraska volumes of water that were in excess of Kansas’ allocations.

The State of Kansas filed a request to file an original action in the United States Supreme Court against the State of Nebraska and the State of Colorado in May 1998. Kansas alleged that Nebraska was consuming more than its allocation and that groundwater use in Nebraska was depriving Kansas of its full allocation. Kansas later amended its allegations to assert that the Republican River Compact regulated groundwater use. The United States Supreme Court granted Kansas’ request for leave to sue in January 1999.

Nebraska answered the lawsuit, brought claims against Kansas and Colorado. A Special Master was appointed in November 1999.

After fourteen months of intense settlement negotiations, Kansas, Nebraska and Colorado on December 15, 2002, entered into a Settlement Agreement resolving all claims brought in the Kansas v. Nebraska litigation. The terms of the Settlement Agreement are described in Section \_\_. As part of the Settlement Agreement, the three States engaged in a joint groundwater modeling effort to create and adopt a functional joint groundwater model by July 1, 2003.

On April 15, 2003, the Special Master appointed by the United States Supreme Court formally recommended to the Court approval of the settlement agreement entered into by Kansas, Nebraska and Colorado. On May 19, 2003, the United States Supreme Court approved the Final Settlement Stipulation entered into by Kansas, Nebraska and Colorado. On September 17, 2003, the Special Master submitted his Final Report to the United States Supreme Court approving the RRCA Joint Groundwater Model adopted by the States on July 1, 2003.

### **Statutory Requirements**

The Nebraska Legislature in 1996 passed LB 108 that allowed Natural Resource Districts to consider whether a management area for integrated management of hydrologically connected ground water and surface water or that controls in a management area should be adopted to include such integrated management is necessary (LB 108 is codified at Neb. Rev. Stat. § 46-656.28). If a District has reason to believe integrated management is necessary, a District may utilize the procedures established in 46-656.19 to 46-656.21 or may request that the affected appropriators, the affected surface water project sponsors, and the Department consult with the district and that studies and a hearing be held on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water.

### **LB 108 Study Requests**

In July 1996, the Basin NRDs requested that the Department begin the studies and hearing process provided for in 46-656.28 (LB 108). The Department, pursuant to Neb. Rev. Stat. 46-656.28(2), made a preliminary determination, based on information available to the Department, that there was reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over the Republican River Compact.

Based on the nature of claims by Kansas against Nebraska, the Attorney General's Office determined that continuing the 46-656.28 (LB 108) process would compromise Nebraska's defense of the Kansas lawsuit. At the request of the Attorney General's Office, in June, 1999 the Basin NRDs asked the Department to suspend the 46-656.28

(LB 108) process pending resolution of the Kansas lawsuit. The Department complied with the Republican River Districts requests.

In anticipation of the resolution of the Kansas v. Nebraska, No. 126 Original, litigation, the Republican River Districts requested that the Department resume the 46-656.28 (LB 108) process and utilize the settlement joint groundwater modeling efforts in carrying out the Department's duties under 46-656.28(2).

### **Nebraska Department of Natural Resources Determination**

The Department examined the ongoing joint modeling efforts and determined sufficient information existed from which to make preliminary findings pursuant to Neb. Rev. Stat. § 46-656.28(2). On May 20, 2003, the Department made the following determination:

Pursuant to §46-656.28 and the preliminary findings in this report, the Department determines that present and future Compact disputes arising out of the use of hydrologically connected ground water and surface water resources in the Republican River Basin can be eliminated or reduced through the adoption of a joint action plan.

Consistent with the resolution of the litigation between Kansas, Nebraska and Colorado, and the scarcity of resources to conduct large scale studies, the Department limited its analysis to 46-656.28(2)(b). The Department's determination addresses the extent to which use of hydrologically connected ground water and surface water resources is contributing to disputes over interstate compacts or decrees. The Department's review was limited solely to the Republican River Basin as the Republican River Compact defines those boundaries and as the States of Kansas, Nebraska, and Colorado have interpreted that definition. A map of the Basin boundaries is attached.

The Department, after making its determination, held the following public hearings: on \_\_\_\_\_ in Imperial, Nebraska; on \_\_\_\_\_ in McCook, Nebraska; on \_\_\_\_\_ in \_\_\_\_\_, Nebraska; on \_\_\_\_\_ in \_\_\_\_\_, Nebraska.

### **Joint Action Plan Orders**

Based on the determination of the Department and in compliance with the Ground Water Management and Protection Act, the Basin NRDs adopted orders to proceed with developing a joint action plan for integrated management.

### **Summary of Public Involvement**

The public hearings by the Department were well attended and the public provided substantial comments. Transcripts of the hearings may be requested from the Department.

## Summary of Authorities

### Statutes

At the time this BCCP is agreed to by the Department and the Basin NRDs the process for adopting joint action plans for integrated management is governed by Neb. Rev. Stat. §46-656.28. During this same time period the Nebraska Legislature's Water Policy Task Force ("WPTF") may recommend changes to the process for adopting integrated management. The proposed legislative changes would not change the statutory authority for joint action plans in the Republican River Basin, except to the extent that should the WPTF legislation is adopted, any modifications to joint action plans adopted by the Basin NRDs after the effective date of such legislation shall be adopted consistent with Section

For the convenience of the Department, Basin NRDs and water users, the full text of the statutory authority is provided herein.

#### 46-656.28

Joint action plan for integrated management of ground and surface water; preparation; when; procedure; factors; notice; hearing; determination; order; publication; modification; water use monitored; temporary suspension of drilling; variance.

(1) If a district on its own motion or following a request by a surface water appropriator, surface water project sponsor, ground water user, the Department of Natural Resources, or another state agency has reason to believe that a management area should be designated for integrated management of hydrologically connected ground water and surface water or that controls in a management area should be adopted to include such integrated management, the district may utilize the procedures established in sections 46-656.19 to 46-656.21 or may request that the affected appropriators, the affected surface water project sponsors, and the Department of Natural Resources consult with the district and that studies and a hearing be held on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water.

(2) If, following a request from a district and as a result of information available to the Department of Natural Resources and following preliminary investigation, the Director of Natural Resources makes a preliminary determination that there is a reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to (a) conflicts between ground water users and surface water appropriators, (b) disputes over interstate compacts or decrees, or (c) difficulties fulfilling the provisions of other formal state contracts or agreements, the department shall, in cooperation with any appropriate state agency and district, conduct or coordinate any necessary studies to determine the cause of such conflicts, disputes, or difficulties and the extent of the area affected. Such studies shall be prioritized and completed within a reasonable time following such preliminary determination. The department shall issue a written report of such preliminary findings within ninety days after the completion of any such studies. The department shall consider all relevant portions of the ground water

management plan developed by the district pursuant to sections 46-656.12 to 46-656.16 during the study required by this section.

(3) If the director determines from any studies conducted pursuant to subsection (2) of this section or from information otherwise available that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to conflicts between ground water users and surface water appropriators, to disputes over interstate compacts or decrees, or to difficulties fulfilling the provisions of other formal state contracts or agreements and that conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements could be eliminated or reduced through the exercise of the authority granted by subsection (5) of this section, he or she shall, within thirty days after completion of the report required by subsection (2) of this section, consult with the affected surface water appropriators and district containing the area affected by such conflicts, disputes, or difficulties and fix a time and place for a public hearing to consider the report, hear any other relevant evidence, and secure testimony on whether a joint action plan should be prepared. The hearing shall be held within ninety days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of all areas that will be considered for inclusion in the management area for which the district and director are considering in the preparation of a joint action plan.

(4) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services Regulation and Licensure, the Department of Environmental Quality, the affected surface water project sponsor or sponsors, and the appropriate surface water appropriators and district or districts may offer as evidence any information in their possession relevant to the purpose of the hearing. Within ninety days after the hearing or after any further studies or investigations conducted by or on behalf of the director, as he or she deems necessary, the district shall determine by order whether to proceed with developing a joint action plan for integrated management.

If the district determines that it should proceed and the district and the director determine that a joint action plan should be prepared, the district and the director shall develop a joint action plan to be utilized within the area in order to mitigate or eliminate conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements.

(5) The district's portion of the joint action plan developed under this section shall include one or more of the controls authorized by section 46-656.25 and shall be completed within one year after the date of the district's resolution to proceed. The portion of the joint action plan developed by the Department of Natural Resources shall be completed within one year after the date of the district's resolution to proceed and shall include one or more of the following measures concerning the use of surface water:

- (a) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually;
- (b) The prohibition or limitation of additional surface water appropriations;
- (c) Requirements for surface water appropriators to apply or utilize reasonable conservation measures or best management practices consistent with the good husbandry and other requirements of section 46-231; or
- (d) Other reasonable restrictions on surface water use that are consistent with the intent of section 46-656.05 and the requirements of section 46-231.

If the department determines that surface water appropriators should be required to apply or utilize reasonable conservation measures or best management practices, the department's portion of the joint action plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days unless extended by the department, to identify the conservation measures or best management practices to be applied or utilized and a schedule for such application and utilization.

(6) In developing their respective portions of the joint action plan authorized by subsection (5) of this section, the department and the district shall consider, but not be limited to considering, whether it reasonably appears that such action would mitigate or eliminate the condition which led to designation of the management area or the adoption of a joint action plan for the management area or will improve the administration of the management area.

(7) The district shall also determine that designation of a management area and adoption of a joint action plan would be in the public interest.

(8) Neither well registration dates nor appropriation dates shall be a factor in determining whether a management area shall be designated or a joint action plan prepared.

(9) In determining whether designating a management area or adopting a joint action plan would be in the public interest, the district shall consider (a) the impacts of the existing or projected diminution or degradation of water resources on (i) surface water appropriators, (ii) ground water users, (iii) public health and safety, (iv) social, economic, and environmental values in the affected area or areas, and (v) compliance with state laws, rules, or regulations, including, but not limited to, constitutional and statutory preferences in the use of water and interstate compacts or decrees, and (b) whether designation and implementation of a management area or adoption and implementation of a joint action plan would prevent or alleviate the impact of such diminution or degradation of water resources.

(10) Following completion of the district's and the director's portions of the joint action plan, the district, in order to establish a management area, shall fix a time and place for a public hearing to consider the joint action plan information and to hear any other relevant evidence. The hearing shall be held within sixty days after completion of the joint action plan and shall be located within or in reasonable proximity to the area proposed for designation as a management area.

Notice of the hearing shall be published at the expense of the district in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of the contents of the

joint action plan and of the area that will be considered for inclusion in the management area and shall provide the text of all controls proposed for adoption by the district and the department.

All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the department and shall include the results of any studies or investigations conducted by the district or the director.

(11) Within ninety days after the hearing the district shall determine by order whether a management area shall be designated.

If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt the joint action plan, to include one or more controls authorized by section 46-656.25 and subsection (5) of this section to be utilized within the area in order to mitigate or eliminate the conflicts, disputes, or difficulties described in subsection (9) of this section. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(12) The district shall cause a copy of any order adopted pursuant to subsection (11) of this section to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved. The last publication shall be not less than ten days prior to the effective date of the order. The order shall become effective on the date specified by the district but not later than ninety days after the date of establishment of the management area.

(13) Modification of a district's portion of a joint action plan may be accomplished utilizing the procedure established for the initial adoption of the joint action plan. Modification of the boundaries of a district-designated management area for integrated management or dissolution of such an area shall be in accordance with the procedures established in sections 46-656.19 to 46-656.21. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Modification of controls also may be accomplished using the procedure in such sections.

(14) Each district in which a joint action plan for a management area has been adopted shall, in cooperation with the surface water appropriators, any surface water project sponsors, and the department, establish a program to monitor use of hydrologically connected ground water and surface water resources in the area which is contributing to or is in the reasonably foreseeable future likely to contribute to conflicts between ground water users and surface water appropriators, to disputes over interstate compacts or decrees, or to difficulties fulfilling the provisions of other formal state contracts or agreements.

(15) For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators under the Nebraska Ground Water Management and Protection Act does not include holders of instream flow appropriations under sections 46-2,107 to 46-2,119.



(16)(a) If a district, in accordance with subsection (1) of this section, has initiated the process for the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water, the district may adopt regulations to require a temporary suspension in the drilling of certain new wells in the district or portion of the district for which the preparation of the joint action plan is proposed. If such temporary suspension is imposed, it shall apply to all new wells in the geographic area involved except (i) test holes or dewatering wells with an intended use of ninety days or less, (ii) water wells designed and constructed to pump fifty gallons per minute or less, and (iii) water wells defined by the district to be replacement water wells. The regulations to impose such temporary suspension may be adopted only after a public hearing for which notice has been given as provided in section 46-656.19. Any such temporary suspension could be imposed initially for not to exceed three years, but could be extended thereafter on an annual basis for not to exceed two years if necessary to allow adoption and implementation of a management area and action plan in accordance with subsections (11) and (12) of this section; (b) Any such temporary suspension shall be immediately rescinded for the applicable portion or portions of the geographic area involved if any of the following events occur: (i) The director determines, in accordance with subsection (2) or (3) of this section that there is no reason to believe that the conditions described in such subsections exist and that therefor no hearing is required on a question of whether a joint action plan should be prepared; (ii) the district determines, pursuant to subsection (5), (6), (7), (8), or (9) of this section that it should not proceed to develop a joint action plan; (iii) the district determines pursuant to subsection (11) of this section that a management area should not be adopted; or (iv) an order adopted by the district pursuant to subsection (11) of this section becomes effective and designates the area or areas involved as a management area and adopts a joint action plan which includes one or more controls authorized by section 46-656.25; (c) The district may grant a variance from the temporary suspension if it determines that construction of a new well is necessary to alleviate an emergency situation involving the provision of water for human consumption.

### **Compact**

The 1943 Republican River Compact ("Compact") entered into by the States of Colorado, Kansas, and Nebraska with Congressional approval governs the use of the waters of the Republican River Basin. A copy of the Compact can be found at: The Republican River Compact, Act of February 24, 1943, 1943 Neb. Laws 377, codified at 2A Neb. Rev. Stat. App. § 1-106 (1995), Republican River Compact, Act of May 26, 1943, ch. 104, 57 Stat. 86.

### **Settlement**

On April 15, 2003 the Special Master appointed by the United States Supreme Court in the *Kansas v. Nebraska, Colorado* case recommended approval of the settlement agreement reached by the Republican River Compact States. The terms of the settlement agreement are set forth in the Final Settlement Stipulation and attached Appendices. The Special Master stated:

On full consideration of the Final Settlement Stipulation, I find that it constitutes a fair and legally sound resolution of all of the Compact interpretation and enforcement issues presented in this action, provides detailed techniques for determining future compliance, and serves the public interest by making the Compact easier to administer and enforce and by diminishing the likelihood of future conflict. I am fully satisfied that in framing the Final Settlement Stipulation the party States have stayed within the boundaries of the Compact and that their settlement is in all respects compatible with the controlling provisions and purposes of the Compact. I therefore recommend that the Court approve the Final Settlement Stipulation as submitted.

Second Report of the Special Master, *Kansas v. Nebraska, Colorado*, Original No. 126 United States Supreme Court. A copy of the Final Settlement Stipulation is attached hereto as Attachment \_\_\_.

Upon the submittal of the Special Master's recommendation, on May 19, 2003 the United States Supreme Court approved the Final Settlement Stipulation.

This cause, having come to be heard on the Second Report of the Special Master appointed by this Court, and on the Parties' Joint Motion for Approval of Final Settlement Stipulation, which accompanies said Report, IT IS HEREBY ORDERED THAT:

1. The Final Settlement Stipulation executed by all of the parties to this case and filed with the Special Master on December 16, 2002, is approved;

*Kansas v. Nebraska*, 538 U.S. \_\_\_ (2003)

### **Findings and Studies Conducted**

Pursuant to 46-656.28(2) the Department, in cooperation with the Basin NRDs, studies to determine the cause of possible interstate compact disputes in the Republican River Basin and the extent of the area. The Department contracted with the Conservation and Survey Division of the University of Nebraska ("CSD") to undertake a limited hydrological study of the Republican River Basin at selected sites along the main stem of the river and two tributaries thereof. The CSD was contracted by the Department in 1997 to conduct an investigation that included pumping tests, a cross-sectional computer model of the hydrogeologic system, geochemical and isotopic characterization of surface water and groundwater, test-hole log books, and soil surveys. The work included pumping test analysis and evaluation of the impact of irrigation well pumpage on the stream-aquifer systems along the Republican Valley and Groundwater modeling and analysis of streamflow depletion in Franklin and Red Willow counties. The work of the CSD

ultimately was superceded by the work of the States in the Kansas v. Nebraska litigation and settlement process.

During the course of settlement negotiations to resolve the Kansas v. Nebraska, No. 126 Original, litigation, the States of Kansas, Nebraska and Colorado worked together in a joint examination of the hydrology, geology and other conditions in the Republican River Basin by creating a joint groundwater model. The States created a Modeling Committee, comprised of members designated by the States and the United States. The Modeling Committee developed a groundwater model acceptable to the States ("RRCA Groundwater Model") to accomplish the purposes identified in the Settlement Agreement, including determination of stream flow depletions caused by well pumping of groundwater.

The Basin NRDs and the Department will utilize the RRCA Groundwater Model and any other relevant analytical tools on an ongoing basis to manage and administer hydrologically connected surface water and groundwater in the Republican River Basin.

### **Authority for JAP**

On May 20, 2003, the Department made the following determination:

Pursuant to §46-656.28 and the preliminary findings in this report, the Department determines that present and future Compact disputes arising out of the use of hydrologically connected ground water and surface water resources in the Republican River Basin can be eliminated or reduced through the adoption of a joint action plan.

A copy of the Department determination is attached hereto as Attachment \_\_\_\_. Each of the Basin NRDs has, pursuant to Neb. Rev. Stat. §46-656.28(4), issued an order requiring the development of a Joint Action Plan. A copy of the Basin NRD orders is attached hereto as Attachment \_\_\_\_.

### **BCCP/JAP Goals**

To resolve the dispute over the Republican River Compact in Kansas v. Nebraska, No. 126 Original, implement and comply with the Compact and the United States Supreme Court approved settlement agreement, the Department and each of the Basin NRDs will need to develop a Joint Action Plan, which includes an integrated management plan, to administer, regulate and manage the use of hydrologically connected ground water and surface water resources in the Republican River Basin to maintain the total Computed Beneficial Consumptive Use in Nebraska within the amount of Computed Water Supply allocated to Nebraska.

## **BCCP/JAP Objectives**

### **Consultation Process**

Article X of the Compact requires that:

It shall be the duty of the three States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact.

The Department has been given this responsibility by statute and ultimately must take the steps necessary to ensure compliance with the Compact.

The BCCP provides the mechanism for determining what is necessary to comply with the Compact in any year, two-year, and five-year period. The Department, the Basin NRDs and other groups (as statutorily required or otherwise agreed to) shall use the following process, unless modified by agreement of the Department and the Basin NRDs:

Forecasting Available Supplies (annual):

- (a) Using the RRCA Accounting Procedures as a guide, the Department shall in September preceding the next water year make an initial determination of the likely total Nebraska allocation of Computed Water Supply for the coming year.
- (b) Upon completing the initial determination of the likely total Nebraska allocation, the Department and the Basin NRDs will meet within thirty days to review the Department's initial determination. The Department, in consultation with the Basin NRDs, will determine the available Computed Water Supply in each Basin NRD.
- (c) The Department and Basin NRDs will meet as necessary to complete the process of determining available Computed Water Supply in each Basin NRD, except that the Department by January 30 of the next water year shall complete the determination.

Forecasting Available Supplies (long-term):

- (a) Using the RRCA Accounting Procedures as a guide, the Department will annually make an initial determination of the likely total Nebraska allocation of Computed Water Supply for the next five year period.

- (b) Upon completion of the five year forecast, the Department will consult with the NRDs on the likely five year available supply in each NRD.

#### Forecasting Beneficial Consumptive Uses (annual)

- (a) Using the RRCA Groundwater Model and such other analytical and technical tools as necessary, the Department and Basin NRDs shall by \_\_\_\_\_ forecast the likely beneficial consumptive use in each Basin NRD and the Basin within Nebraska.
- (b) Using the RRCA Accounting Procedures as a guide, the forecast will be based on the anticipated beneficial consumptive use resulting under the current management tools in place in each Basin NRD and those tools adopted by the Department.

#### Forecasting Beneficial Consumptive Uses (long-term)

- (a) Using the RRCA Accounting Procedures as a guide, the Department will annually make an initial determination of the likely total Nebraska Beneficial Consumptive Use for the next five year period.
- (b) Upon completion of the five year forecast, the Department will consult with the NRDs on the likely five year beneficial consumptive use in each NRD resulting under the current management tools in place in each Basin NRD and those tools adopted by the Department.

#### Compact Compliance Objectives

- (a) Using the forecasted annual and long-term supplies and the forecasted annual and long-term beneficial consumptive uses the Department will each year by \_\_\_\_\_ set a compliance objective for the coming year for the Republican River Basin in Nebraska.
- (b) Using the Department's Basin wide compliance objective and the forecasted annual and long-term supply and beneficial consumptive uses for each NRD, the Department, in consultation with the Basin NRDs, will set a compliance objective for each NRD for the coming year.

Each Basin NRDs' Joint Action Plans will address the process by which each Basin NRD intends to meet its compliance objective. *[This provides the Basin NRDs flexibility without the need to revise Rules and Regulations every year to meet changing supply and use conditions]*

## **Define Boundaries**

The geographic area governed by the BCCP is the Republican River Basin as the Republican River Compact defines those boundaries and as the States of Kansas, Nebraska, and Colorado have interpreted the Compact definition in the Settlement Agreement. A map of the Basin boundaries is attached. Each Basin NRD can, as part of a Joint Action Plan adopted consistent with the BCCP, extend the geographic area to include the entire area of the NRD.

## **Identify Hydrologically Connected Surface Water and Ground Water**

The Final Settlement Stipulation approved by the United States Supreme Court provides that Compact compliance will be determined pursuant to the RRCA Accounting Procedures agreed to by the States. The RRCA Accounting Procedures will utilize the RRCA Groundwater Model to quantify within the Republican River Basin the amount, location, and timing of depletions to stream flow from ground water pumping. The States through the RRCA have adopted the RRCA Groundwater Model.

As part of the joint groundwater modeling efforts, the States studied, examined and ultimately agreed to a general determination of the extent of hydrological connection of ground water and surface water resources in the Republican River Basin. The States did not agree as to the specific connection of each individual use. The States did agree that the analysis performed by technical consultants for each State and the United States Government revealed a general level of connectivity for the Republican River Basin as a whole and for specific streams therein. The analysis conducted was a baseflow hydrograph separation analysis and is documented at Appendix J1 of the Final Settlement Stipulation. This procedure was adopted for application in this ground water model since it combines the increased accuracy of graphical baseflow analysis with the computational efficiency afforded by electronic spreadsheets. For the RRCA Ground Water Model, fifty-seven (57) independent baseflow analyses were performed. In general terms, the States agreed that the baseflow analyses provided an overall assessment of the level of hydrologic connectivity between ground water and surface water resources in the analyzed streams.

## **Management area**

The Basin NRDs will, as part of their respective Joint Action Plan, adopt a management area that will encompass all of the Republican River Basin as defined in the Compact. Each Basin NRD can, as part of a Joint Action Plan adopted consistent with the BCCP, extend the management area to include the entire area of the NRD.

## **Analytic tools**

The Department and the Basin NRDs may use the RRCA Groundwater Model and such other analytical and technical tools as necessary to develop joint action plans that

provides for compliance with the Compact and the United States Supreme Court approved Final Settlement Stipulation. The management alternatives and tools for integrated management of hydrologically connected surface water and groundwater adopted by each Basin NRD Joint Action Plan need to be sufficient to achieve Compact compliance while maximizing the economic and social benefits of using available water supplies

### **Available controls**

The Department may adopt whatever legally available surface water management controls it deems are necessary to meet the Basin wide and NRD specific Compact compliance objectives. Each Basin NRD may adopt whatever legally available ground water management controls it deems are necessary to meet the Basin wide and NRD specific Compact compliance objectives.

### **Monitoring**

The RRCA Accounting Procedures adopted as part of the Final Settlement Stipulation require certain monitoring and reporting requirements on the part of the State of Nebraska. The Department and the Basin NRDs will determine what steps are necessary to meet those monitoring and reporting requirements and will develop in their respective joint action plans the necessary rules and regulations to carry out those requirements.

### **Impact evaluation**

As part of developing a joint action plan, each Basin NRD is required by Neb. Rev. Stat. §46.656.28(9)

In determining whether designating a management area or adopting a joint action plan would be in the public interest, the district shall consider (a) the impacts of the existing or projected diminution or degradation of water resources on (i) surface water appropriators, (ii) ground water users, (iii) public health and safety, (iv) social, economic, and environmental values in the affected area or areas, and (v) compliance with state laws, rules, or regulations, including, but not limited to, constitutional and statutory preferences in the use of water and interstate compacts or decrees, and (b) whether designation and implementation of a management area or adoption and implementation of a joint action plan would prevent or alleviate the impact of such diminution or degradation of water resources.

### **Impact on water resources**

The Compact was adopted to promote “the most efficient use of the waters of the Republican River Basin for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies;

to promote interstate comity; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.” Republican River Compact Article I.

The Department in its determination found that

All Compact accounting projections using the RRCA Accounting Procedures and the baseflow analysis of the effects of the use of hydrologically connected groundwater and surface water resources, indicates that while Nebraska generally is within its Compact allocations in normal water supply years at the current time, in the future without limitations on new uses, Nebraska may be in a situation where it would be difficult to avoid violating the Compact.

DNR Report of Preliminary Findings p. 8. The Department further found that to

implement and comply with the Compact and the United States Supreme Court approved settlement agreement, the Department and the Republican River Natural Resource Districts will need to develop a joint integrated management plan to administer, regulate and manage the use of hydrologically connected ground water and surface water resources in the Republican River Basin. Failure to implement and comply with the Compact and the United States Supreme Court approved settlement agreement will result in future disputes over the Compact.

DNR Report of Preliminary Findings p. 9.

The Final Settlement Stipulation provides for development of uses within a management area to address emergency public health and safety situations and any joint action plans should include provisions consistent with those found in the Final Settlement Stipulation.

The Compact was adopted in 1943 and has been a governing federal and state law since its adoption. Most if not all, social and environmental values in the area have been developed with knowledge that they are subject to the Compact.

An economic analysis of the impacts of reduced water supply resulting from the absence of a management area both by county and NRD is attached hereto as Attachment \_\_\_\_.

### **Prevention or alleviation of impacts on water resources**

The Department has determined that “present and future Compact disputes arising out of the use of hydrologically connected ground water and surface water resources in the Republican River Basin can be eliminated or reduced through the adoption of a joint action plan.” DNR Report of Preliminary Findings p. 9.



### **Periodic review of BCCP and Basin NRDs' Joint Action Plans**

The Department and the Basin NRDs agree that at least once before the end of the first five year period after agreement to this BCCP, they will review the BCCP to examine whether the BCCP provides the most efficient and practical means for ensuring compliance with the Compact and Final Settlement Stipulation.

As is necessary to meet the Compact compliance objectives determined using the procedures in this BCCP, the Basin NRDs and the Department will review the Basin NRDs' joint action plans to determine if they are sufficient to maintain compliance with the Compact and Final Settlement Stipulation. Such review shall not occur more than once per water/calendar year.

### **Modification to meet new conditions**

If the review of the BCCP, a Basin NRD joint action plan demonstrate a need to modify or if unforeseen conditions arise that demonstrate the substantial likelihood of failure by Nebraska to comply with the Compact and Final Settlement Stipulation, the Department and NRD will initiate the steps necessary to modify, as necessary, the BCCP or joint action plan.

### **Public education and out reach**

*[Do we need as this is part of the tools available by statute to the NRDs]*