



Kathleen Sebelius, Governor
Adrian J. Polansky, Secretary

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January 24, 2007

Dr. Ann Bleed, Director
Nebraska Department of Natural Resources
301 Centennial Mall South
Lincoln, Nebraska 68509-4676

Dear Ms. Bleed:

Congratulations on your recent appointment as Director of the Department of Natural Resources (DNR). We are looking forward to working with you and your staff in dealing with many issues important to both of our states. We appreciate that both you and Governor Heineman seem to understand Nebraska's Compact obligations and the need to take them seriously. One example of this is the Governor's statement on December 14, 2006, where he said, "Our No. 1 goal for 2007 should be to be in compliance for that year." I agree.

On the other hand, it is not clear that the Nebraska Natural Resource Districts (NRDs) fully understand Nebraska's Compact obligations, especially its obligations under the Water-Short Year provisions of the Final Settlement Stipulation (FSS). They don't seem to see the need for immediate and significant actions to reduce consumptive water use to come into compliance.

As you know, the first Water-Short Year test of compliance under the Settlement is for the year 2006. Unfortunately, every indication is that Nebraska will be out of compliance with this test. The U.S. Bureau of Reclamation is projecting that 2007 will be another year with Water-Short Year Administration in effect and that the Bostwick water supply will be zero. Barring an extremely wet 2007, or without substantial action in 2007, it seems likely that Nebraska will fail both the Water-Short Year test for 2007 as well as the first five-year test of compliance for 2003 through 2007. For the first three years under Compact accounting, Nebraska overused its allocations by over 100,000 acre-feet. It is hard to imagine Nebraska being able to comply in 2007 and beyond without a significant curtailment of pumping from the beginning of the 2007 irrigation season. Yet, so far, we observe no discussion by the NRDs of pumping curtailment or reductions for 2007, much less consideration being given to implementation.

Nebraska's failure to reduce water use has and is significantly increasing the hardships experienced by Kansas water users and there is no end to these hardships foreseeable in the near future. This is unacceptable in my view and cannot continue.

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Given Nebraska's overuse in every accounting period to date, and the current water-short conditions, it is apparent that there will need to be substantial curtailment or reductions in groundwater pumping to limit Nebraska's consumptive use to its Compact allocation.

Nebraska's noncompliance is likely to be exacerbated by a number of actions, omissions and misconceptions being discussed at NRD board meetings and elsewhere, including, among others, the following:

- 1) NRD allocations. The NRDs are apparently not considering additional reductions in allocations for 2007 or limitations in carry-over of unused allocations.
- 2) NRD transfers/variances. Among recent NRD actions have been the approval of the transfers of unused allocations from wells enrolled in EQIP and CREP programs to other active irrigation wells, transfers of fragmented acres not enrolled in CREP and not currently irrigated to new consolidated tracts, and approval of variances for new industrial uses without full offsets.
- 3) Augmentation wells and imports. The NRD's and others are discussing plans to develop augmentation wells for pumping into the streams above key gages as a means to offset stream depletions. We note that FSS Subsections III.B.1.k, and IV H require such plans be approved by the Republican River Compact Administration (RRCA) prior to implementation.

Similarly, the NRDs and others have been discussing the potential for bringing in additional water from outside the Basin. Imported water supply credits can only be included in the modeling and accounting with the approval of the RRCA.

In either case, the RRCA groundwater model and the RRCA accounting procedures require full consideration of all the impacts of such actions. Moreover, without careful management, such waters would likely be largely consumed in Nebraska. For both reasons, benefits to Nebraska will likely be much less than anticipated.

- 4) Removal of non-native invasive riparian vegetation. Although the removal of phreatophytes and their replacement by less consumptive vegetation could cause some relatively small increases in Computed Water Supply, there is little consideration given to the fact that Nebraska would only receive a portion of the increase as increased allocation. Further, the reduced phreatophyte area must be input into the RRCA groundwater model, likely reducing the predicted ET salvage, further diminishing any benefit to Nebraska.
- 5) Conservation measures. The effect of conservation measures has also been discussed, under the apparent assumption that the RRCA groundwater model and the accounting procedures are flawed due to the lack of consideration of these impacts. This is not the case. While the runoff portion of stream flow has declined, this decline is not assigned to stream flow depletions by groundwater pumping. The model was calibrated based on the depletive effect of groundwater pumping on base flows. The gage values used in the calculation of Computed Water Supply may reflect a reduction in streamflow due to conservation measures and other

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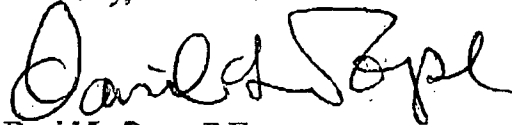
practices, but none of the states are charged with that depletion as consumptive use, whatever its cause.

I also understand that the Unicameral is considering legislation that may have the potential to further thwart the State's ability to comply with the Compact. Compact compliance is a responsibility of the State of Nebraska and any measure that would further complicate the ability of the State of Nebraska to comply would not be in the best interests of either of our states.

The FSS requires that Nebraska report to Kansas by April 30 as to how it plans to come into compliance this year. The FSS also requires that, "In each Water-Short Year Administration year, Nebraska will advise the other States and the United States no later than June 30 of the measures it has taken or will take for the year..." I am most interested in hearing your plans and actions for coming into compliance, both on April 30 and on June 30 in 2007.

I felt that I should provide you with my concerns as soon as possible so that they may be addressed immediately. These are only my initial reactions to the developments described above. Other concerns may arise upon further consideration. Thank you again for the efforts you have made thus far in furthering Nebraska's Compact compliance efforts.

Sincerely,



David L. Pope, P.E.
Chief Engineer

DLP/db/dlh

By Fax and U.S. Mail

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