

DEPARTMENT OF  
NATURAL RESOURCES

REPUBLICAN RIVER BASIN

REPORT OF PRELIMINARY FINDINGS

MAY 20, 2003

## **I. Introduction:**

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 Nebraska Legislature in 1996 passed LB 108 that allowed Natural Resource Districts to consider whether a 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. 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.

In July, 1996, the Republican River Natural Resource Districts requested that the Department begin the studies and hearing process provided for in 46-656.28 (LB 108). (Attached hereto as Exhibits are the written requests from the Republican River Natural Resource Districts) 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 (Attached hereto is the preliminary determination of the Department).

Pursuant to 46-656.28(2) the Department began, in cooperation with the Republican River Natural Resource Districts, studies to determine the cause of such possible disputes and the extent of the area affected (hereinafter integrated management studies). The Department contracted with the Conservation and Survey Division of the University of Nebraska 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 (hereinafter CSD study). 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 superseded by the work of the States in the litigation and settlement process. Much of the work done by CSD is reflected in the joint groundwater modeling work of the States. As a result, the CSD study was not relied upon by the Department in making its preliminary findings and determination.

While the CSD study was underway, the State of Kansas filed an original action in the United States Supreme Court against the State of Nebraska, alleging 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 groundwater use was regulated by 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 Republican River Natural Resource Districts 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.

On December 15, 2002, Kansas, Nebraska and Colorado entered into a settlement agreement resolving all claims brought in the Kansas lawsuit. As part of the settlement agreement the three States agreed to undertake a joint groundwater modeling effort to create and adopt a functional joint groundwater model by July 1, 2003. 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). The Department has examined the ongoing joint modeling efforts and determined sufficient information exists from which to make preliminary findings pursuant to Neb. Rev. Stat. § 46-656.28(2).

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.

As a result of the pending litigation between Kansas, Nebraska and Colorado, the proposed resolution of that litigation and the scarcity of resources to conduct large scale studies, the Department has limited its analysis to 46-656.28(2)(b), 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 has been limited solely to the Republican River

Basin as those boundaries are defined by the Republican River Compact and as that definition has been interpreted by the States of Kansas, Nebraska, and Colorado. A map of the Basin boundaries is attached.

## **II. Applicable Statutes:**

### **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 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.

### **III. Studies Conducted by the Department:**

#### **A. Republican River Districts Groundwater Management Plans, Groundwater Management Area Rules and Regulations.**

The Department has reviewed the following Republican River Natural Resource District Management Plans, Rules and Regulations:

1. Upper Republican Natural Resource District RULES AND REGULATIONS FOR GROUND WATER CONTROL OF THE UPPER REPUBLICAN NATURAL RESOURCES DISTRICT MANAGEMENT AREA ORDER NO. 26 & TECHNICAL MANUAL TM – 26;
2. Middle Republican Natural Resource District GROUNDWATER MANAGEMENT PLAN FOR THE MIDDLE REPUBLICAN NATURAL RESOURCES DISTRICT. RULES AND REGULATIONS, GROUND WATER MANAGEMENT AREA, MIDDLE REPUBLICAN NATURAL RESOURCES DISTRICT. RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT. RULES AND REGULATIONS FOR THE TEMPORARY SUSPENSION OF THE DRILLING OF NEW WELLS;
3. Lower Republican Natural Resource District GROUNDWATER MANAGEMENT PLAN;
4. Tri-Basin Natural Resource District RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE NEBRASKA GROUNDWATER MANAGEMENT AND PROTECTION ACT.

#### **B. Technical work prepared by joint groundwater modeling efforts and by Nebraska litigation consultants.**

In connection with the settlement negotiations to resolve the Kansas v. Nebraska, No. 126 Original, litigation, Nebraska retained numerous consultants to examine and study the hydrology, geology and other conditions of the Republican River Basin that were possibly contributing to the dispute over the Republican River Compact. As part of the settlement documentation submitted to the United States Supreme Court, the states of Kansas, Nebraska and Colorado agreed to certain aspects of hydrology concerning historical stream flow in the Republican River Basin. The pertinent aspects of those agreements as they relate to the Department's determination are discussed below and attached hereto.

### **C. Final Settlement Stipulation as approved by the United States Supreme Court.**

The following is a general description of the State of Nebraska's obligations pursuant to the Final Settlement Stipulation. (A copy of the Final Settlement Stipulation is attached hereto). A description of the specific obligations of the States is discussed below in the preliminary findings section.

The States agreed to resolve the currently pending litigation in the United States Supreme Court regarding the Republican River Compact by means of the Final Settlement Stipulation. The States have agreed to implement and comply with the obligations set forth in the Final Settlement Stipulation. The States shall implement the obligations and agreements in the Final Settlement Stipulation in accordance with the schedule set forth in Appendix B of the Final Settlement Stipulation

### **D. Joint groundwater modeling efforts and RRCA Joint Groundwater Model.**

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 by July 1, 2003 will have developed a groundwater model acceptable to the States to accomplish the purposes set forth in this Subsection IV.C., including determination of stream flow depletions caused by Well pumping of groundwater. A description of the relevant portions of the joint groundwater modeling efforts of the States is discussed below in the preliminary findings section.

## **IV. Preliminary Findings Regarding Use of Hydrologically Connected Groundwater and Surface Water Resources Contributing to 656.28(2)(b) disputes over interstate compacts and decrees.**

The Department has limited its analysis to 46-656.28(2)(b), the extent to which use of hydrologically connected ground water and surface water resources is contributing to disputes over interstate compacts or decrees.

### **A. Agreements concerning Compact implementation and compliance**

With the approval of the settlement agreement by the United States Supreme Court, beneficial consumptive use of hydrologically connected groundwater and surface water resources that results in depletion of stream flows in the Republican River Basin will be accounted for as virgin water supply and beneficial consumptive use under the Compact. To resolve the pending Compact dispute and to avoid future Compact disputes the State has entered into several agreements that address the use of hydrologically connected ground water and surface water resources. Those agreements that pertain to the use of hydrologically connected ground water and surface water resources include:

**Agreement concerning additional groundwater well development** - The settlement agreement provides for a moratorium on construction of new wells in Nebraska upstream of Guide Rock, Nebraska. The settlement agreement also requires Colorado and Kansas to maintain their existing rules and regulations, which have created a de facto moratorium in areas upstream of Nebraska. The States also agreed not to increase the level of development of Wells as of July 1, 2002 in the North Fork of the Republican River in Colorado, Arikaree River, South Fork of the Republican River, Buffalo Creek, Rock Creek, and that portion of the North Fork and Main Stem of the Republican River in Nebraska that lies upstream of Trenton Dam. The States also agreed to several exceptions to the moratorium which are set forth in Section III.B. of the Final Settlement Stipulation. As a result of consistent measurement over time of generally rising water tables in the Tri-Basin NRD section of the Republican River Basin

**Agreement to include groundwater use in Compact Accounting** - The States have agreed that to implement the Compact they will determine annually the Virgin Water Supply, Computed Water Supply, Allocations, Imported Water Supply Credit, augmentation credit and Computed Beneficial Consumptive Use (as those terms are defined in the Final Settlement Stipulation) based on a methodology set forth in the RRCA Accounting Procedures, attached to the Final Settlement Stipulation as Appendix C. As part of those determinations, the States have agreed that “[s]tream flow depletions caused by Well pumping for Beneficial Consumptive Use will be included in the determination of Virgin Water Supply, Computed Water Supply, Allocations and Computed Beneficial Consumptive Use in accordance with the formulas in the RRCA Accounting Procedures provided that the RRCA may agree to exclude from such accounting minimal stream flow depletions. Stream flow depletions caused by Well pumping for Beneficial Consumptive Use will be counted as Virgin Water Supply and Computed Beneficial Consumptive Use at the time and to the extent the stream flow depletion occurs and will be charged to the State where the Beneficial Consumptive Use occurs.” Final Settlement Stipulation, Section IV.C.1.

**Agreements related to reporting, measurement and data collection** – The States have agreed that each State will provide all information from their respective State that is needed for the Republican River Groundwater Model and RRCA Accounting Procedures and Reporting Requirements. A specific description of such information is contained in the RRCA Accounting Procedures attached to the Final Settlement Stipulation as Appendix C. The information includes in general terms, surface water diversions, groundwater diversions, irrigated acreage, climate information, crop irrigation requirements, stream flow records and reservoir information.

**Agreements related to water short year administration** – The States have agreed that when water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 Acre-feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in the Harlan County Lake Operation Consensus Plan (attached as Appendix K to the Final Settlement Stipulation), Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock.

The States have also agreed that Water-Short Year Administration (as defined in the Final Settlement Stipulation) will be in effect in those years in which the projected or actual irrigation supply is less than 119,000 acre feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in the Harlan County Lake Operation Consensus Plan.

During Water-Short Year Administration, Nebraska will limit its Computed Beneficial Consumptive Use above Guide Rock to not more than Nebraska's Allocation that is derived from sources above Guide Rock, and Nebraska's share of any unused portion of Colorado's Allocation. To accomplish this limitation, Nebraska may use one or more of the following measures: i) supplementing water for Nebraska Bostwick Irrigation District by providing alternate supplies from below Guide Rock or from outside the Basin; ii) adjusting well allocations for alluvial Wells above Guide Rock; iii) adjusting multi-year well allocations for non-alluvial Wells above Guide Rock; iv) reducing use of storage by Nebraska Bostwick Irrigation District above Guide Rock; v) dry year leasing of water rights that divert at or above Guide Rock, or; vi) any other measures that would help Nebraska limit Computed Beneficial Consumptive Use above Guide Rock to not more than that portion of Nebraska's allocation that is derived from sources above Guide Rock and would (1) produce water above Harlan County Lake; (2) produce water below Harlan County Lake and above Guide Rock that can be diverted during the Bostwick irrigation season; or (3) produce water that can be stored and is needed to fill Lovewell Reservoir. In years projected to be subject to Water-Short Year Administration, Nebraska will advise the other States and the United States no later than April 30 of measures Nebraska plans to take for that year and the anticipated water yield from those measures. 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 and the anticipated water yield from those measures.

To resolve the pending dispute, 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. For purposes of Compact compliance, the extent of hydrologic connectivity will be determined by the RRCA Groundwater Model.

#### **B. Relevant Findings and Agreements of Joint Groundwater Modeling Efforts:**

The States agree that for determining Compact compliance the jointly developed groundwater model (RRCA Groundwater Model) will be utilized to quantify within the Republican River Basin the amount, location, and timing of depletions to stream flow from ground water pumping. The RRCA Groundwater Model will be adopted by the States by July 1, 2003. Sufficient information has been examined, studied and agreed to by the States such that the Department can make preliminary findings regarding the extent to which the use of hydrologically connected ground water and surface water resources is contributing to disputes over interstate compacts or decrees.



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 certain 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. Hydrograph baseflow separation is a technique that partitions the amount of surface water and ground water that is measured as total streamflow at a river gaging station. Determining the component of total streamflow that is contributed by ground water (also called baseflow) requires professional expertise and judgment. The hydrograph separation analysis used in this application is referred to as the Pilot Point method. 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.

For purposes of Compact compliance, the extent of hydrologic connectivity will be determined by the RRCA Groundwater Model. The Department and the Republican River Natural Resource Districts may use the RRCA Groundwater Model and such other analytical and technical tools as necessary 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 that provides for compliance with the Compact and the United States Supreme Court approved settlement. 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.

### **C. Analysis of current status of effects of the use of hydrologically connected groundwater and surface water resources on the Republican River Compact dispute.**

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. An integrated management plan with reasonable pumping regulation and a moratorium will provide Nebraska maximum protection from future disputes over Compact violations.

## V. Conclusion:

The dispute over the Republican River Compact in Kansas v. Nebraska, No. 126 Original, includes the issue to what extent the use of hydrologically connected ground water and surface water resources in the Republican River Basin should be accounted for under the Compact. The geographic area affected by this dispute is the Republican River Basin as those boundaries are defined by the Republican River Compact and as that definition has been interpreted by the States of Kansas, Nebraska, and Colorado. A map of the Basin boundaries is attached.

As described above, to resolve the dispute, 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.

For purposes of Compact compliance, the extent of hydrologic connectivity will be determined by the RRCA Groundwater Model. The Department and the Republican River Natural Resource Districts may use the RRCA Groundwater Model and such other analytical and technical tools as necessary to develop a joint integrated management plan that provides for compliance with the Compact and the United States Supreme Court approved settlement agreement.

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. Therefore, the Director shall, within thirty days after completion of this report, consult with the affected surface water appropriators and Natural Resource Districts 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.

May 20, 2003



Roger K. Patterson  
Director, Department of Natural Resources

Decree

**SUPREME COURT OF THE UNITED STATES**

No. 126, Orig.

STATE OF KANSAS, PLAINTIFF *v.* STATES  
OF NEBRASKA AND COLORADO

ON BILL OF COMPLAINT

[May 19, 2003]

The Final Report of the Special Master is received and ordered filed.

**DECREE**

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;
2. This action is recommitted to the Special Master for the sole purpose of deciding procedural questions arising in the completion by the State parties of the RRCA Groundwater Model pursuant to the binding procedures prescribed by the Final Settlement Stipulation. All claims, counterclaims, and cross-claims for which leave to file was or could have been sought in this case arising prior to December 15, 2002, are hereby dismissed with prejudice effective upon the filing by the Special Master of a final report certifying adoption of the RRCA Groundwater Model by the State parties.

No. 126, Original

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In The  
SUPREME COURT OF THE UNITED STATES

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STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

And

STATE OF COLORADO,

Defendants.

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BEFORE THE HONORABLE VINCENT L. MCKUSICK  
SPECIAL MASTER

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FINAL SETTLEMENT STIPULATION

December 15, 2002

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

I. General

- A. The States agree to resolve the currently pending litigation in the United States Supreme Court regarding the Republican River Compact by means of this Stipulation and the Proposed Consent Judgment attached hereto as Appendix A.
- B. The States agree to undertake the obligations set forth in this Stipulation. The States shall implement the obligations and agreements in this Stipulation in accordance with the schedule attached hereto as Appendix B.
- C. Upon the Court's approval of this Stipulation and entry of the Proposed Consent Judgment, the States agree that all claims against each other relating to the use of the waters of the Basin pursuant to the Compact with respect to activities or conditions occurring before December 15, 2002, shall be waived, forever barred and dismissed with prejudice. These claims shall include all claims for Compact violations, damages, and all claims asserted or which could have been asserted in the pending proceeding, No. 126, Original.
- D. With respect to activities or conditions occurring after December 15, 2002, the dismissal will not preclude a State from seeking enforcement of the provisions of the Compact, this Stipulation and the Proposed Consent Judgment. Nor will the dismissal preclude any State in such future action from asserting any legal theories it raised in the present proceeding, or any other legal theories, with respect to activities or conditions occurring after the date of such dismissal. The States agree that this Stipulation and the Proposed Consent Judgment are not intended to, nor could they, change the States' respective rights and obligations under the Compact. The States reserve their respective rights under the Compact to raise

any issue of Compact interpretation and enforcement in the future.

- E. Specific information-sharing requirements are set forth in the RRCA Accounting Procedures, attached hereto as Appendix C. The States will provide each other with the opportunity to inspect and copy their records pertaining to water use in the Basin, other than privileged materials, upon request. The States will cooperate in arranging verification as reasonably necessary.
- F. The RRCA may modify the RRCA Accounting Procedures, or any portion thereof, in any manner consistent with the Compact and this Stipulation.
- G. Headings in this Stipulation are provided for convenience only and shall not affect the substance of any provision.
- H. This Stipulation supersedes the Settlement Principles signed by the States on April 30, 2002.
- I. The provisions of Subsection IV.C. relating to the development of the RRCA Groundwater Model shall be in effect and enforceable between December 15, 2002 and July 1, 2003 or until the Court's approval or disapproval of this Stipulation, whichever is later.
- J. Within six months of the final dismissal of this case, the RRCA shall revise its existing rules and regulations as necessary to make them consistent with this Stipulation and the RRCA Accounting Procedures.

## II. Definitions

Wherever used in this Stipulation the following terms are defined as:

**Acre-foot:** The quantity of water required to cover an acre to the depth of one foot, equivalent to forty-three thousand, five hundred sixty (43,560) cubic feet;



**Actual Interest:** A State will be deemed to have an actual interest in a dispute if resolution of the dispute could require action by the State, result in increasing or decreasing the amount of water available to a State, affect the State's ability to monitor or administer water use or water availability, or increase the State's financial obligations;

**Addressed by the RRCA:** A matter is deemed to be addressed by the RRCA when the RRCA has taken final action by vote on such request or failed to take action by vote on the request after a Reasonable Opportunity to investigate and act on the request;

**Allocation(s):** The water supply allocated to each State from the Computed Water Supply;

**Annual:** As defined in the RRCA Accounting Procedures Section II;

**Basin:** Republican River Basin as defined in Article II of the Republican River Compact;

**Beneficial Consumptive Use:** That use by which the Water Supply of the Basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area;

**Compact:** The Republican River Compact, Act of February 22, 1943, 1943 Kan. Sess. Laws 612, codified at Kan. Stat. Ann. § 82a-518 (1997); Act of February 24, 1943, 1943 Neb. Laws 377, codified at 2A Neb. Rev. Stat. App. § 1-106 (1995), Act of March 15, 1943, 1943 Colo. Sess. Laws 362, codified at Colo. Rev. Stat. §§ 37-67-101 and 37-67-102 (2001); Republican River Compact, Act of May 26, 1943, ch. 104, 57 Stat. 86;

**Computed Beneficial Consumptive Use:** The stream flow depletion resulting from the activities of man as listed in the definition of Computed Beneficial Consumptive Use in the RRCA Accounting Procedures Section II;

**Computed Water Supply:** As defined in the RRCA Accounting Procedures Section II;

**Conservation Committee:** The conservation measures study committee established in Subsection VI.B.1;

**Court:** The United States Supreme Court;

**Designated Drainage Basins:** The drainage basins of the specific tributaries and Main Stem of the Republican River as described in Article III of the Compact;

**Dewatering Well:** A Well constructed solely for the purpose of lowering the groundwater elevation;

**Federal Reservoirs:** Bonny Reservoir, Swanson Lake, Enders Reservoir, Hugh Butler Lake, Harry Strunk Lake, Keith Sebelius Lake, Harlan County Lake, Lovewell Reservoir;

**Flood Flows:** The amount of water deducted from the Virgin Water Supply as part of the computation of the Computed Water Supply due to a flood event as determined by the methodology described in the RRCA Accounting Procedures, Subsection III.B.1.;

**Guide Rock:** A point at the Superior-Courtland Diversion Dam on the Republican River near Guide Rock, Nebraska; the Superior-Courtland Diversion Dam gage plus any flows through the sluice gates of the dam, specifically excluding any diversions to the Superior and Courtland Canals, shall be the measure of flows at Guide Rock;

**Historic Consumptive Use:** That amount of water that has been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

**Imported Water Supply:** The water supply imported by a State from outside the Basin resulting from the activities of man;

**Imported Water Supply Credit:** The accretions to stream flow due to water imports from outside of the Basin as computed by the RRCA Groundwater Model. The Imported Water Supply Credit of a State shall not be included in the Virgin Water Supply and shall be counted as a credit/offset against the Computed Beneficial Consumptive Use of that State's Allocation, except as provided in Subsection V.B.2. of this Stipulation and Subsections III.I. – J. of the RRCA Accounting Procedures;

**Main Stem:** The Designated Drainage Basin identified in Article III of the Compact as the North Fork of the Republican River in Nebraska and the main stem of the Republican River between the junction of the North Fork and the Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line and the small tributaries thereof, and also including the drainage basin Blackwood Creek;

**Main Stem Allocation:** The portion of the Computed Water Supply derived from the Main Stem and the Unallocated Supply derived from the Sub-basins as shared by Kansas and Nebraska;

**Modeling Committee:** The joint groundwater modeling committee established in Subsection IV.C.;

**Moratorium:** The prohibition and limitations on construction of new Wells in the geographic area described in Section III;

**Non-Federal Reservoirs:** Reservoirs other than Federal Reservoirs that have a storage capacity of 15 Acre-feet or greater at the principal spillway elevation;

**Northwest Kansas:** Those portions of the Sub-basins within Kansas;

**Proposed Consent Judgment:** The document attached hereto as Appendix A;

**Reasonable Opportunity:** The RRCA will be deemed to have had a reasonable opportunity to investigate and act on a regular request when, at a minimum, the issue has been discussed at the next regularly scheduled annual meeting. If the RRCA agrees that an issue requires additional investigation, the RRCA may specify a period of time that constitutes a reasonable opportunity for completion of such investigation and final action on the particular issue. The RRCA will be deemed to have had a reasonable opportunity to investigate and act on a "fast-track" request when the issue has been discussed at a meeting of the RRCA no later than 30 days after the "fast-track" issue has been raised. If the RRCA agrees that a "fast track" issue requires additional investigation, the RRCA may specify a period of time that constitutes a reasonable opportunity for completion of such investigation and final action on the particular issue;

**Replacement Well:** A Well that replaces an existing Well that a) will not be used after construction of the new Well and b) will be abandoned within one year after such construction or is used in a manner that is excepted from the Moratorium described in Subsections III.B.1.c.- f. of this Stipulation;

**RRCA:** The Republican River Compact Administration, the administrative body composed of the State officials identified in Article IX of the Compact;

**RRCA Accounting Procedures:** The document titled "The Republican River Compact Administration Accounting Procedures and Reporting Requirements" and all attachments thereto, attached hereto as Appendix C;

**RRCA Groundwater Model:** The groundwater model developed under the provisions of Subsection IV.C. of this Stipulation;

**State:** Any of the States of Colorado, Kansas and Nebraska;

**States:** The States of Colorado, Kansas and Nebraska;

**Stipulation:** This Final Settlement Stipulation to be filed in *Kansas v. Nebraska and Colorado*, No. 126, Original, including all Appendices attached hereto;

**Sub-basin:** Any of the Designated Drainage Basins, except for the Main Stem, identified in Article III of the Compact;

**Submitted to the RRCA:** A matter is deemed to have been submitted to the RRCA when a written statement requesting action or decision by the RRCA has been delivered to the other RRCA members by a widely accepted means of communication and receipt has been confirmed;

**Test hole:** A hole designed solely for the purposes of obtaining information on hydrologic and/or geologic conditions;

**Trenton Dam:** The dam located at 40 degrees, 10 minutes, 10 seconds latitude and 101 degrees, 3 minutes, 35 seconds longitude, approximately two and one-half miles west of the town of Trenton, Nebraska;

**Unallocated Supply:** The "water supplies of upstream basins otherwise unallocated" as set forth in Article IV of the Compact;

**Upstream of Guide Rock, Nebraska:** Those areas within the Basin lying west of a line proceeding north from the Nebraska-Kansas state line and following the western edge of Webster County, Township 1, Range 9, Sections 34, 27, 22, 15, 10 and 3 through Webster County, Township 2, Range 9, Sections 34, 27 and 22; then proceeding west along the southern edge of Webster County, Township 2, Range 9, Sections 16, 17 and 18; then proceeding north following the western edge of Webster County, Township 2, Range 9, Sections 18, 7 and 6, through Webster County, Township 3, Range 9, Sections 31, 30, 19, 18, 7 and 6 to its intersection with the northern boundary of Webster County. Upstream of Guide Rock, Nebraska shall not

include that area in Kansas east of the 99° meridian and south of the Kansas-Nebraska state line. Attached to this Stipulation in Appendix D is a map that shows the areas upstream of Guide Rock, Nebraska. In the event of any conflict between this definition and Appendix D, this definition will control;

**Virgin Water Supply:** The Water Supply within the Basin undepleted by the activities of man.

**Water Supply of the Basin or Water Supply within the Basin:** The stream flows within the Basin, excluding Imported Water Supply;

**Well:** Any structure, device or excavation for the purpose or with the effect of obtaining groundwater for beneficial use from an aquifer, including wells, water wells, or groundwater wells as further defined and used in each State's laws, rules, and regulations.

### III. Existing Development

#### A. Moratorium on New Wells

1. Except as provided below, the States hereby adopt a prohibition on the construction of all new Wells in the Basin upstream of Guide Rock, Nebraska (hereinafter "Moratorium"). The Moratorium may be modified, in whole or in part, by the RRCA if it determines that new information demonstrates that additional groundwater development in all or any part of the Basin that is subject to the Moratorium would not cause any State to consume more than its Allocations from the available Virgin Water Supply as calculated pursuant to Section IV of this Stipulation. New information shall mean results from the RRCA Groundwater Model or any other appropriate information. Attached hereto in Appendix E, are such laws, rules and regulations in Nebraska concerning the prohibition on construction of new Wells in the Basin.

2. Nothing in this Stipulation, and specifically this Subsection III.A., shall extend the Moratorium or create an additional Moratorium in any of the States in any other river basin or in any other groundwater supply located outside of the Basin.
3. Notwithstanding the provision in Subsection III.A.1. of this Stipulation permitting the RRCA to modify the prohibition on construction of new Wells, the States will not increase the level of development of Wells as of July 1, 2002 in the following Designated Drainage Basins, subject to the exceptions set forth in Subsection III.B.1-2.:

North Fork of the Republican River in Colorado  
Arikaree River  
South Fork of the Republican River  
Buffalo Creek  
Rock Creek

That portion of the North Fork and Main Stem of the Republican River in Nebraska that lies upstream of Trenton Dam.

Any of the States may seek to amend this provision of this Stipulation by making application to the Court upon any change in conditions making modification of this Subsection III.A.3. necessary or appropriate.

B. Exceptions to Moratorium on New Wells

1. The Moratorium shall not apply to the following:
  - a. Any and all Wells in the Basin located within the current boundaries of the following Natural Resource Districts in Nebraska:
    - i. The Tri-Basin Natural Resource District;
    - ii. The Twin Platte Natural Resource District;  
and

- iii. The Little Blue Natural Resource District.

Attached to this Stipulation in Appendix D is a map that shows the areas described in this Subsection III.B.1.a. In the event of any conflict between this Subsection and Appendix D, this Subsection will control;

- b. Any and all Wells in the Basin in Nebraska located in the following described areas:

- i. Lincoln County, Township 9, Range 27, Sections 5-7;
- ii. Lincoln County, Township 9, Range 28, Sections 1-23, 28-30;
- iii. Lincoln County, Township 9, Range 29, Sections 1-18, 21-26;
- iv. Lincoln County, Township 9, Range 30, Sections 1-6, 8-13;
- v. Lincoln County, Township 9, Range 31, Sections 1-2;
- vi. Lincoln County, Township 10, Range 27, Sections 19-24, 27-33;
- vii. Lincoln County, Township 10, Range 28, Sections 1-36;
- viii. Lincoln County, Township 10, Range 29, Sections 1-36;
- ix. Lincoln County, Township 10, Range 30, Sections 1-36;



- x. Lincoln County, Township 10, Range 31, Sections 1-18, 20-27 and 34-36;
- xi. Lincoln County, Township 10, Range 32, Sections 1-4 and 10-13;
- xii. Lincoln County, Township 11, Range 28, Sections 28-35;
- xiii. Lincoln County, Township 11, Range 29, Sections 19-36;
- xiv. Lincoln County, Township 11, Range 30, Sections 19-36;
- xv. Lincoln County, Township 11, Range 31, Sections 19-36;
- xvi. Lincoln County, Township 11, Range 32, Sections 19-36;
- xvii. Lincoln County, Township 11, Range 33, Sections 19-30, 32-36;
- xviii. Lincoln County, Township 11, Range 34, Sections 21-27;
- xix. Frontier County, Township 6, Range 24, Sections 1-36;
- xx. Frontier County, Township 7, Range 24, Sections 1-36; and,
- xxi. Frontier County, Township 8, Range 24, Sections 19-21 and 27-36.

Attached to this Stipulation in Appendix D is a map that shows the areas described in this Subsection III.B.1.b. In the event of any conflict

between this Subsection and Appendix D, this Subsection will control.

- c. Test holes;
- d. Dewatering Wells with an intended use of one year or less;
- e. Wells designed and constructed to pump fifty gallons per minute or less, provided that no two or more Wells that pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute;
- f. Wells designed and constructed to pump 15 Acre-feet per year or less, provided that no two or more Wells that pump 15 Acre-feet per year or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed 15 Acre-feet per year;
- g. Replacement Wells, subject to all limitations or permit conditions on the existing Well, or in the absence of any limitation or permit condition only if the Beneficial Consumptive Use of water from the new Well is no greater than the Historic Consumptive Use of water from the Well it is to replace. Nebraska will calculate Historic Consumptive Use in the manner proposed in Appendix F. Nebraska shall not change its proposed method of calculating Historic Consumptive Use before providing notice to the RRCA;
- h. Wells necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety;

- i. Wells to which a right or permit is transferred in accordance with state law, provided however, that the new Well:
  - (i) consumes no more water than the Historic Consumptive Use of water under the right or permit that is being transferred; and
  - (ii) is not a transfer of a right or permit that would cause an increased stream depletion upstream of Trenton Dam.

Nebraska will calculate Historic Consumptive Use in the manner proposed in Appendix F. Nebraska shall not change its proposed method of calculating Historic Consumptive Use before providing notice to the RRCA;

- j. Wells for expansion of municipal and industrial uses. Any new Wells for these purposes shall be counted against the State's Allocation and, to the extent a State is consuming its full Allocation, other uses shall be reduced to stay within the State's Allocation; and
- k. Wells acquired or constructed by a State for the sole purpose of offsetting stream depletions in order to comply with its Compact Allocations. Provided that, such Wells shall not cause any new net depletion to stream flow either annually or long-term. The determination of net depletions from these Wells will be computed by the RRCA Groundwater Model and included in the State's Computed Beneficial Consumptive Use. Augmentation plans and related accounting procedures submitted under this Subsection III.B.1.k. shall be approved by the RRCA prior to implementation.

2. The Moratorium shall not apply to nor create any additional limitations on new Wells in Northwest Kansas and Colorado in the Basin other than those imposed by state laws, rules and regulations in existence as of April 30, 2002. Provided however, that the Historic Consumptive Use of a Well in Colorado or Northwest Kansas that is or would have been accounted for in Compact accounting as a stream depletion reaching the Republican River downstream of Trenton Dam may not be transferred to a Well that would cause a depletion reaching the Republican River upstream of Trenton Dam. Further, neither Colorado nor Kansas shall change their laws, rules or regulations in existence as of April 30, 2002, to the extent that such changes would result in restrictions less stringent than those set forth in Subsection III.B.1. above. Attached hereto in Appendices G and H, respectively, are such laws, rules and regulations in Northwest Kansas and Colorado in existence as of April 30, 2002.

C. Surface Water Limitations

Each of the States has closed or substantially limited its portion of the Basin above Hardy, Nebraska to new surface water rights or permits. Each State agrees to notify each Official Member of the RRCA and the U. S. Bureau of Reclamation at least 60 days prior to a new surface water right or permit being granted or prior to adopting changes to its current restrictions related to granting new surface water rights or permits in the Basin above Hardy, Nebraska and provide the RRCA an opportunity for discussion. Each State, however, reserves the right to allow new surface water rights or permits to use additional surface water if such use can be made within the State's Compact Allocation.

D. Reporting

Beginning on April 15, 2003, or such other date as may be agreed to by the RRCA and on the same date each year thereafter, each State will provide the other States with an annual report for the previous year of all Well construction in

the State within the Basin Upstream of Guide Rock, Nebraska and all denials of Well permits or other requests for Well construction. The report shall include such information as required by the RRCA Accounting Procedures, Section V.

#### IV. Compact Accounting

- A. The States will determine Virgin Water Supply, Computed Water Supply, Allocations, Imported Water Supply Credit, augmentation credit and Computed Beneficial Consumptive Use based on a methodology set forth in the RRCA Accounting Procedures, attached hereto as Appendix C.
- B. Water derived from Sub-basins in excess of a State's specific Sub-basin Allocations is available for use by each of the States to the extent that:
  - 1. such water is physically available;
  - 2. use of such water does not impair the ability of another State to use its Sub-basin Allocation within the same Sub-basin;
  - 3. use of such water does not cause the State using such water to exceed its total statewide Allocation; and
  - 4. if Water-Short Year Administration is in effect, such use is consistent with the requirements of Subsection V.B.
- C. Determination of stream flow depletions caused by Well pumping and determination of Imported Water Supply Credit will be accomplished by the RRCA Groundwater Model as used in the RRCA Accounting Procedures.
  - 1. Stream flow depletions caused by Well pumping for Beneficial Consumptive Use will be included in the determination of Virgin Water Supply, Computed Water Supply, Allocations and Computed Beneficial Consumptive Use in accordance with the formulas in the RRCA Accounting Procedures provided that the RRCA

may agree to exclude from such accounting minimal stream flow depletions. Stream flow depletions caused by Well pumping for Beneficial Consumptive Use will be counted as Virgin Water Supply and Computed Beneficial Consumptive Use at the time and to the extent the stream flow depletion occurs and will be charged to the State where the Beneficial Consumptive Use occurs.

2. The States agree to devote the necessary time and resources, subject to legislative appropriations, to complete the RRCA Groundwater Model in consultation with the appropriate United States agencies.
3. The States have created a Modeling Committee, comprised of members designated by the States and the United States. Each State may appoint at least one member but no more than three to the Modeling Committee. The United States may designate no more than two representatives to the Modeling Committee. The Modeling Committee shall develop a groundwater model acceptable to the States to accomplish the purposes set forth in this Subsection IV.C. The meetings and other work of the Modeling Committee shall be subject to the Confidentiality Agreement dated October 19, 2001, signed by the States and the United States, attached hereto as Appendix I.

Nothing in this Stipulation shall be construed as limiting the attendance and observation by non-member representatives of the participants at any meeting of the Modeling Committee or participation by non-members in the independent work of the States and United States representatives.

4. The States and the United States have agreed to freely and immediately share all available data, information, expert knowledge, and other information necessary for the Modeling Committee to complete the modeling work as requested by any member of the Modeling Committee. Data and information is considered to be "available" if it

is not otherwise privileged and is (1) used by a State in the modeling process, or (2) is in the possession or control of a State, including its political subdivisions, in the form that the information exists at the time of the request. Data and information "necessary to complete the modeling work" also includes any available information to verify any other data and information. Shared information shall be subject to the Confidentiality Agreement dated October 19, 2001, signed by the States and the United States.

5. If at any time, the members of the Modeling Committee cannot reach agreement on necessary modifications to the RRCA Groundwater Model or any other issues, the Modeling Committee shall report the nature of the dispute to the States promptly and the States shall resolve the dispute as soon as possible.
6. The structure of the RRCA Groundwater Model, together with agreed upon architecture, parameters, procedures and calibration targets as of November 15, 2002, are described in the memorandum attached hereto as Appendix J.
7. The Modeling Committee shall submit the RRCA Groundwater Model to the States in final form with sufficient time for the States to review and agree to the RRCA Groundwater Model by July 1, 2003.
8. Upon agreement by the States to the RRCA Groundwater Model, the States, through the RRCA, shall adopt the RRCA Groundwater Model for purposes of Compact accounting. Following final dismissal of this case, the RRCA may modify the RRCA Groundwater Model or the associated methodologies after discussion with the U.S. Geological Survey.
9. Between December 15, 2002 and July 1, 2003, if the States are unable to agree upon the final RRCA Groundwater Model or if any disputes arise in the

Modeling Committee that the States cannot resolve, the dispute will be submitted to binding expert arbitration for resolution as set forth in this Subsection IV.C.9. No State may invoke binding arbitration unless it has first raised the issue it seeks to have arbitrated in the Modeling Committee and to the States as provided for in Subsection IV.C.5. For purposes of this Subsection IV.C.9., written communications required by this Subsection IV.C.9. shall be provided by both U.S. Mail and by facsimile to both counsel of record and the Official Member of the RRCA for each State and to counsel of record for the United States.

- a. **Initiation:** Any State may invoke binding arbitration by providing written notice to the other States on or before July 1, 2003. A copy of any notice will be provided to the United States at the same time. Notice for the purposes of this Section shall include a written description of the scope of the dispute, with sufficient detail to provide the States with an understanding of the substance of the dispute and all related issues, a description of all attempts to resolve the dispute and sufficient information for the other States to identify the technical skills that should be possessed by potential arbitrators necessary to resolve the dispute. Upon receipt of notice, each State has five business days to amend the scope of the dispute in writing to address additional issues. If unforeseen issues are identified after the deadline for amending the scope of the dispute, they may be added upon agreement of the States or at the discretion of the arbitrator.
- b. **Selection:** Upon receipt of notice of a dispute, the States shall confer within the deadlines set forth below to choose an arbitrator(s) and the States will in good faith attempt to agree on an arbitrator(s).



- i. Within seven business days of receipt of the initial notice, each State shall submit the names of proposed arbitrators, including qualifications, to the other States. Within seven business days of receipt of the proposed names, the States will meet, in person or by telephone conference, and confer to agree on an arbitrator(s).
- ii. If the States are unable to agree on an arbitrator(s), within seven business days each State will propose an arbitrator(s), not to exceed two and shall submit the proposed names to the other States and the United States in writing within the time set forth below. Upon receipt of each State's list of proposed arbitrators, within seven business days each State will rank and comment on each proposed arbitrator and submit those comments in writing to the Special Master. The United States, as amicus, may submit rankings and comments to the Special Master. The Special Master will initially eliminate any proposed arbitrators from consideration based upon objections by any State of conflict and/or bias. If all of a State's choices are eliminated by conflict and/or bias, a State may submit the name of an additional arbitrator and each State and the United States may provide comments and objections based on conflict and/or bias within a time limit set by the Special Master.
- iii. Any person submitted as a possible arbitrator by any State shall not be an employee or agent of any State, shall be a person knowledgeable in groundwater modeling, and shall disclose any actual or potential conflict of interest and all current

or prior contractual and other relationships with any person or entity who could be directly affected by resolution of the dispute. Any person who has a contractual relationship with any State shall be automatically disqualified for conflict of interest unless the other States expressly agree in writing to submission of that person's name to the Special Master. Any other contested claims of conflict or bias will be resolved by the Special Master.

- iv. The Special Master will then choose an arbitrator(s) from the remaining non-conflicted choices.
- c. First Arbitration Meeting: Upon selection of an arbitrator(s), the arbitrator(s) shall, within seven business days, hold an initial meeting or conference with the States and the United States, as amicus, to determine a schedule and procedures for exchange of information necessary to resolve the dispute, and for submission and resolution of the pending dispute. The arbitrator(s) may also include disputes arising under Subsection IV.C.4. The arbitrator(s) will be subject to the Confidentiality Agreement dated October 19, 2001, signed by the States and the United States.
- d. Costs: The arbitrator(s)' costs shall be paid equally by the States, subject to appropriations by the States respective legislatures. Each State and the United States, as amicus, shall bear its own costs.
- e. Reporting: The arbitrator(s)' decision will be provided to the States and the United States, as amicus, within ten business days of the close of submissions to the arbitrator(s) unless otherwise shortened or extended by agreement of all of the

States. The arbitrator(s)' written report of decision and findings will be submitted to the States and the United States, as amicus, within thirty days of providing the arbitrator(s)' decision.

- f. Implementation: If the dispute is one involving the ongoing work of the Modeling Committee, the decision of the arbitrator(s) as to the resolution of the dispute shall be implemented by the Modeling Committee and their efforts shall proceed. If the dispute resolves the final RRCA Groundwater Model, the decision of the arbitrator(s) as to the final RRCA Groundwater Model shall be adopted by the RRCA for the purposes of Compact accounting.
- D. Except as described in Subsection V.B., all Compact accounting shall be done on a five-year running average in accordance with the provisions of the RRCA Accounting Procedures, attached as Appendix C. Flood flows will be removed as specified in the RRCA Accounting Procedures.
  - 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.
  - F. Beneficial Consumptive Use of Imported Water Supply shall not count as Computed Beneficial Consumptive Use or Virgin Water Supply. Credit shall be given for any remaining Imported Water Supply that is reflected in increased stream flow, except as provided in Subsection V.B. Determinations of Beneficial Consumptive Use from Imported Water Supply (whether determined expressly or by implication), and any Imported Water Supply Credit shall be calculated in accordance

with the RRCA Accounting Procedures and by using the RRCA Groundwater Model.

- G. Measurement techniques, data collection and reporting to facilitate implementation of the Stipulation are set forth in the RRCA Accounting Procedures.
- H. Augmentation credit, as further described in Subsection III.B.1.k., shall be calculated in accordance with the RRCA Accounting Procedures and by using the RRCA Groundwater Model.

V. Guide Rock

A. Additional Water Administration

1. To provide for regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam, Nebraska will recognize a priority date of February 26, 1948 for Kansas Bostwick Irrigation District, which is the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
2. When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 Acre-feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in the Harlan County Lake Operation Consensus Plan attached as Appendix K to this Stipulation, Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock. A description of the implementation of the water administration obligations in this Subsection V.A.2.is attached hereto as Appendix L. The RRCA may modify Appendix L in any manner consistent with this Stipulation and the Compact.

3. Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
4. Kansas and Nebraska, in collaboration with the United States, agree to take actions to minimize the bypass flows at Superior-Courtland Diversion Dam. A description of the process for meeting the obligations in this Subsection V.A.4. is attached hereto as Appendix L. The RRCA may modify this process in any manner consistent with this Stipulation and the Compact.

B. Water-Short Year Administration

1. Identification of Water-Short Year Administration:
  - a. Water-Short Year Administration will be in effect in those years in which the projected or actual irrigation supply is less than 119,000 acre feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in the Harlan County Lake Operation Consensus Plan. If system operations enhancements below Harlan County Lake increase the useable supply to the Bostwick Irrigation Districts, the trigger for Water-Short Year Administration will be adjusted as agreed to by the States and the United States in order to equitably share the benefits of such enhancements. Following the determination that Water-Short Year Administration is in effect, the States will take the actions described in Subsections V.B.2-4.
  - b. Each year between October 1 and June 30, the Bureau of Reclamation will provide each of the States with a monthly or, if requested by any one of the States, a more frequent update of the projected or actual irrigation supply from Harlan County Lake for that irrigation season. The determination that Water-Short Year

Administration is in effect, pursuant to Subsection V.B.1.a., will become final for that year as of June 30.

2. Nebraska action in Water-Short Year Administration:
  - a. During Water-Short Year Administration, Nebraska will limit its Computed Beneficial Consumptive Use above Guide Rock to not more than Nebraska's Allocation that is derived from sources above Guide Rock, and Nebraska's share of any unused portion of Colorado's Allocation (no entitlement to Colorado's unused Allocation is implied or expressly granted by this provision). To accomplish this limitation, Nebraska may use one or more of the following measures:
    - i. supplementing water for Nebraska Bostwick Irrigation District by providing alternate supplies from below Guide Rock or from outside the Basin;
    - ii. adjusting well allocations for alluvial Wells above Guide Rock;
    - iii. adjusting multi-year well allocations for non-alluvial Wells above Guide Rock;
    - iv. reducing use of storage by Nebraska Bostwick Irrigation District above Guide Rock;
    - v. dry year leasing of water rights that divert at or above Guide Rock, or;
    - vi. any other measures that would help Nebraska limit Computed Beneficial Consumptive Use above Guide Rock to not more than that portion of Nebraska's allocation that is derived from sources above

Guide Rock and would (1) produce water above Harlan County Lake; (2) produce water below Harlan County Lake and above Guide Rock that can be diverted during the Bostwick irrigation season; or (3) produce water that can be stored and is needed to fill Lovewell Reservoir.

- b. Nebraska may offset any Computed Beneficial Consumptive Use in excess of its Allocation that is derived from sources above Guide Rock with Imported Water Supply Credit. If Nebraska chooses to exercise its option to offset with Imported Water Supply Credit, Nebraska will receive credit only for Imported Water Supply that: (1) produces water above Harlan County Lake; (2) produces water below Harlan County Lake and above Guide Rock that can be diverted during the Bostwick irrigation season; (3) produces water that can be stored and is needed to fill Lovewell Reservoir; or (4) Kansas and Nebraska will explore crediting water that is otherwise useable by Kansas.
- c. During Water-Short Year Administration, Nebraska will also limit its Computed Beneficial Consumptive Use in the Sub-basins to the sum of Nebraska's specific Sub-basin Allocations and 48.9% of the sum of the Unallocated Supply from those same Sub-basins.
- d. In years projected to be subject to Water-Short Year Administration, Nebraska will advise the other States and the United States no later than April 30 of measures Nebraska plans to take for that year and the anticipated water yield from those measures. 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 and the anticipated water yield from those measures.

- e. For purposes of determining Nebraska's compliance with Subsection V.B.2.:
  - i. Virgin Water Supply, Computed Water Supply, Allocations and Computed Beneficial Consumptive Use will be calculated on a two-year running average, as computed above Guide Rock, with any Water-Short Year Administration year treated as the second year of the two-year running average and using the prior year as the first year; or
  - ii. as an alternative, Nebraska may submit an Alternative Water-Short Year Administration Plan to the RRCA in accordance with the procedures set forth in Appendix M. The RRCA may modify Appendix M in any manner consistent with this Stipulation and the Compact.
- f. If, in the first year after Water-Short Year Administration is no longer in effect, the Compact accounting shows that Nebraska's Computed Beneficial Consumptive Use as calculated above Guide Rock in the previous year exceeded its annual Allocation above Guide Rock, and, for the current year, the expected or actual supply from Harlan County Lake, calculated pursuant to Subsection V.B.1.a., is greater than 119,000 Acre-feet but less than 130,000 Acre-feet, then Nebraska must either make up the entire amount of the previous year's Computed Beneficial Consumptive Use in excess of its Allocation, or the amount of the deficit needed to provide a projected supply in Harlan County Lake of at least 130,000 Acre-feet, whichever is less.



- g. If in any month during the year, the projected or actual irrigation supply from Harlan County Lake is equal to or greater than 119,000 Acre-feet, Nebraska may, at its discretion, cease the administrative action called for in this agreement in Subsection V.B.2.a.; provided, however, that any Alternative Water-Short Year Administration Plan shall be subject to the requirements set forth in Appendix M.
- 3. Colorado action: In those years when Water-Short Year Administration is in effect, Colorado agrees to limit its use of the flexibility identified in Subsection IV.B., to the extent that any portion of Colorado's Allocation from Beaver Creek cannot be used on any other Sub-basin in Colorado.
- 4. Northwest Kansas action: In those years when Water-Short Year Administration is in effect, Kansas agrees to (1) measure compliance in Northwest Kansas on a two-year average, using the current and the previous year, and (2) limit Computed Beneficial Consumptive Use in the Sub-basins to the sum of Kansas' specific Sub-basin Allocations and 51.1% of the sum of the Unallocated Supply from those same Sub-basins and 51.1% of any unused portion of Colorado's Allocation (no entitlement to Colorado's unused Allocation is implied or expressly granted by this provision), or determine compliance in such other manner as agreed to by the RRCA.

## VI. Soil and Water Conservation Measures

- A. For the purposes of Compact accounting the States will calculate the evaporation from Non-Federal Reservoirs located in an area that contributes run-off to the Republican River above Harlan County Lake, in accordance with the methodology set forth in the RRCA Accounting Procedures.
- B. In order to attempt to develop information that may allow the States to assess the impacts of Non-Federal Reservoirs and land

terracing on the water supply and water uses within the Basin, the States agree to undertake a study, in cooperation with the United States, of the impacts of Non-Federal Reservoirs and land terracing on the Virgin Water Supply.

1. The States, in cooperation with the United States, shall form a committee by January 31, 2003, to be known as the Conservation Committee. By April 30, 2004, the Conservation Committee will:
  - a. Evaluate the available methods and data relevant to studying the impacts of Non-Federal Reservoirs and land terracing practices on water supplies, including a review of any existing studies and their applicability to the Basin;
  - b. Determine the general types of data that are available and relevant to the study;
  - c. Determine the availability of data throughout the Basin, and assess the level of accuracy and precision of the data;
  - d. Agree on standards for data;
  - e. Identify additional data necessary to determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supply;
  - f. Propose a methodology for assessing area-capacity relationships for Non-Federal Reservoirs; and
  - g. Submit to the RRCA a proposed study plan to determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supplies, including whether such effects can be determined for each Designated Drainage Basin.
2. Following the RRCA's acceptance of the proposed study plan described in Subsection VI.B.1.g., the States and the

United States will undertake the study at a cost not to exceed one million dollars of which the United States will be responsible for 75% of the cost and each State will be responsible for one third of the remaining 25%. The States' portion may be provided entirely through in-kind contributions. If the cost of the study exceeds one million dollars, the United States will be responsible for the entire additional amount. The States, in cooperation with the United States, shall agree upon the timetable for the completion of such study, which shall be completed within five years of the date the proposed study plan is accepted by the RRCA.

3. Participation in the joint study does not commit any State or the RRCA to take any action or to include soil and water conservation measures in Compact accounting. Each State specifically reserves its position that it need not account for conservation measures as a Beneficial Consumptive Use under the Compact.
4. Participation in the joint study by the States or the United States is contingent upon the appropriation of funds by their respective State Legislatures and Congress. Participation by the States in this study is contingent upon participation and funding by the United States in accordance with this Subsection VI.B.

## VII. Dispute Resolution

### A. Initial Submission to the RRCA:

1. Any matter relating to Republican River Compact administration, including administration and enforcement of the Stipulation in which a State has an Actual Interest, shall first be Submitted to the RRCA. The United States and its agencies may attend all meetings of the RRCA. Proposed agendas, including any regular issue that may be raised, shall be distributed by the chairperson to all RRCA members at least 30 days in advance of any

regular meeting and as soon as possible prior to any special meeting.

2. Each member of the RRCA shall have one vote on each issue Submitted to the RRCA. RRCA action must be by unanimous vote. Action of the RRCA shall be by formal resolution or as reflected in the approved minutes. A request for formal resolution may be made by any member.
3. Any dispute that the State raising the issue for RRCA determination believes requires immediate resolution shall be designated as a "fast-track" issue. Any "fast-track" issue will be Addressed by the RRCA within 30 days of being Submitted to the RRCA unless otherwise agreed to by all States. Nothing in this Section shall prohibit the RRCA from Addressing a dispute prior to the expiration of the 30-day period.
4. Any dispute which the State raising the issue for RRCA determination believes does not require immediate resolution shall be designated as a "regular" issue. Any "regular" issue raised no later than 30 days prior to the next regularly scheduled meeting will be Addressed by the RRCA at that meeting.
5. The RRCA will hold regular meetings pursuant to its rules and regulations. Specially scheduled meetings to address any issue that is Submitted to the RRCA and designated as a "fast-track" issue or for any other emergency purposes shall be held if requested by any member. All members shall make a good faith effort to arrange a mutually agreeable date, time, and place for all meetings. A meeting may be conducted only when all members or their designees are available to attend. In the event a member requests a specially scheduled meeting to address a "fast-track" issue or for any other emergency purposes, such meeting shall be held as soon as reasonably possible, but in no event more than 30 days after the request is made unless more time is agreed to by

all members. If scheduling a meeting in person is not possible within 30 days of a request, the members may conduct a telephone conference or use other means available. If any such meeting is not held within thirty days because of the failure of any member other than the requesting member to attend or to agree to the date and place for the meeting, the State represented by the requesting member shall be relieved of any obligation to submit any dispute to the RRCA for potential consideration and resolution pursuant to the Stipulation.

6. Any issue Submitted to the RRCA by a State will include a specific definition of the issue, supporting materials and a designated schedule for resolution.
7. The RRCA will attempt to resolve any dispute submitted to the RRCA pursuant to this Section VII. If such a dispute cannot be resolved by the RRCA at the regular or special meeting at which the issue is addressed or within a schedule agreed to by all States, and the State raising the dispute desires to proceed, the dispute shall be submitted to non-binding arbitration unless otherwise agreed to by all States with an Actual Interest. The States involved in the dispute may agree that the arbitration shall be binding, but no State shall be subject to binding arbitration without its express written consent.

B. General Dispute Resolution Provisions:

1. Unless otherwise agreed to by all States, non-binding arbitration shall be initiated as follows: Any State, pursuant to Subsection VII.A.7., may invoke arbitration by providing written notice to the other States. A copy of any notice will be provided to the United States at the same time. Notice for the purposes of this Section shall include the time frame designation, a written description of the scope of the dispute, with sufficient detail to provide the States with an understanding of the substance of the dispute and all related issues, and sufficient information for the other States with an Actual Interest to

identify the technical skills that should be possessed by potential arbitrators necessary to resolve the dispute.

2. The arbitrator(s) shall be selected as follows: Upon receipt of notice of a dispute, the States shall confer within the deadlines set forth below to choose an arbitrator(s) and the States will in good faith attempt to agree on an arbitrator(s).
3. Any person submitted as a possible arbitrator by any State, or selected by CDR Associates or other such entity, shall not be an employee or agent of any State, shall be a person generally knowledgeable of the principles of the issues in the dispute, and shall disclose any actual or potential conflict of interest and all current or prior contractual and other relationships with any person or entity who could be directly affected by resolution of the dispute. Any person who has a contractual relationship with any State shall be automatically disqualified for conflict of interest unless the other States expressly agree in writing.
4. The arbitrator(s)' decision shall include a determination of the merits of the dispute and determination of a proposed remedy.
5. The arbitrator(s)' decision shall be provided to the States and the United States by facsimile and mail or comparable means.
6. Within 30 days of the issuance of the arbitrator's decision, the States that are parties to the dispute shall give written notice to the other States and the United States as to whether they will accept, accept and reject in part, or reject the arbitrator's decision.
7. No State shall object to admission of the arbitrator(s)' decision in any subsequent proceedings before the Court, but no State shall assert that the decision is conclusive on any issue. Further, no State shall call the arbitrator(s) as

a witness with regard to the dispute.

8. A State that has submitted a disputed issue to the RRCA and to arbitration as provided in this Section VII shall be deemed to have exhausted its administrative remedies with regard to such issue.

C. Fast Track Dispute Resolution Schedule:

1. Upon receipt of notice under Subsection VII.B.1., each State with an interest in the dispute will have ten business days to amend the scope of the dispute to address additional issues, unless all States agree to a longer schedule. If unforeseen issues are identified after the deadline for amending the scope of the dispute, they may be added upon agreement of all States or at the discretion of the arbitrator.
2. Within ten business days of receipt of the initial notice, each State shall submit the names of proposed arbitrators, including qualifications, to the other States. Within seven business days of receipt of the proposed names, the States will meet, in person or by telephone conference, and confer to agree on an arbitrator(s). If the States with an Actual Interest cannot agree on an arbitrator(s), the selection of the arbitrator will be submitted to CDR Associates, of Boulder, Colorado, or such other person or entity that may be agreed to by the RRCA. Every two years the RRCA will review the entity that will select an arbitrator(s), if the States cannot choose. The States will be bound by the selection of an arbitrator by CDR Associates or such other person or entity.
3. Upon selection of an arbitrator(s), the arbitrator(s) shall, within seven business days, hold an initial meeting/conference with the States, to set the schedule for submission and resolution of the pending dispute. The arbitrator shall set a schedule not to exceed six months unless the States agree otherwise. The States agree to provide all information, except privileged

information, requested by the arbitrator(s).

4. The arbitrator(s) shall issue a decision resolving the dispute within the shortest reasonable time, not to exceed 60 days from the date of final submission by the State parties.

D. Regular Dispute Resolution Schedule:

1. The States with an Actual Interest will agree upon the schedule for amending the scope of the dispute.
2. The States will agree upon the method and schedule for selecting an arbitrator(s).
3. The States and the arbitrator(s) will agree on a schedule for submission and resolution of the pending dispute.
4. The States will agree on a schedule for issuance of a decision by the arbitrator(s).

VIII. Non-Severability of Agreement

The agreement of the States to the terms of this Stipulation is based upon the inclusion of all of the terms hereof, and the rights and obligations set forth in this Stipulation are not severable. If for any reason, the Court should decline to approve this Stipulation in the form presented, the entire Stipulation shall be null and void and the terms of this Stipulation may not be used as evidence in any litigation between the States.

IX. Entirety of Agreement

This Stipulation and the Proposed Consent Judgment, together constitute the entire agreement among the parties hereto. No previous representations, inducements, promises or agreements, oral or otherwise, among the parties not contained in the documents identified in this paragraph or made in compliance with the requirements and obligations contained in the documents identified in this paragraph shall be of any force or effect. Nothing in this Section IX shall be construed as preventing the States from modifying the rules and regulations of the RRCA.



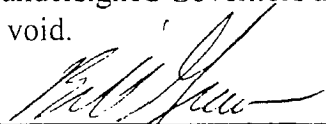
X. Retention of Jurisdiction by the Special Master


The Special Master shall retain jurisdiction until adoption of the RRCA Groundwater Model to:

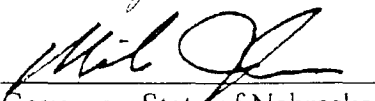
- A. Select an arbitrator, if necessary, pursuant to Subsection IV.C.9.b.ii. - iv.; and
- B. Resolve disputes, not then subject to arbitration pursuant to Subsection IV.C.9., concerning the exchange and availability of data and information consistent with Subsection IV.C.4.

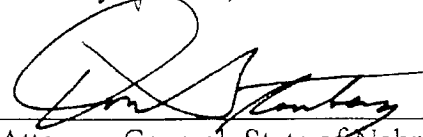
**State Approvals of Final Settlement Stipulation**  
***Kansas v. Nebraska & Colorado, No. 126, Original,***  
**United States Supreme Court**

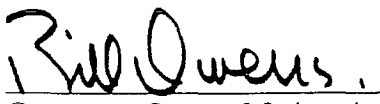
The undersigned Governors and Attorneys General for the States of Kansas, Nebraska and Colorado, having authority to commit the States to a final settlement, hereby commit the States to the terms of this Final Settlement Stipulation reached by their respective Settlement Negotiation Teams. Approval of this Final Settlement Stipulation is conditioned upon the inclusion of all of the terms herein, and the rights and obligations set forth in this Final Settlement Stipulation are not severable. If for any reason, the Special Master or the United States Supreme Court should decline to approve this Stipulation in the form presented, the approvals of the undersigned Governors and Attorneys General for the States shall be null and void.

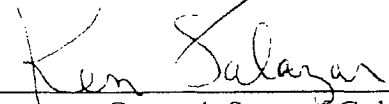
  
\_\_\_\_\_  
Governor, State of Kansas

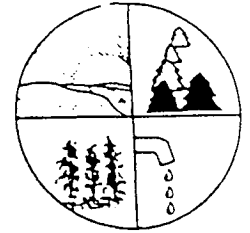
  
\_\_\_\_\_  
Attorney General, State of Kansas

  
\_\_\_\_\_  
Governor, State of Nebraska

  
\_\_\_\_\_  
Attorney General, State of Nebraska

  
\_\_\_\_\_  
Governor, State of Colorado

  
\_\_\_\_\_  
Attorney General, State of Colorado



# Middle Republican Natural Resources District

P.O. Box 81 • Curtis, Nebraska 69025 • Phone (308) 367-4281 • FAX (308) 367-4285

July 15, 1996

RECEIVED

JUL 18 1996

Mr. J. Michael Jess, Director  
Nebr. Department of Water Resources  
P.O. Box 94676  
Lincoln, NE 68509-4676

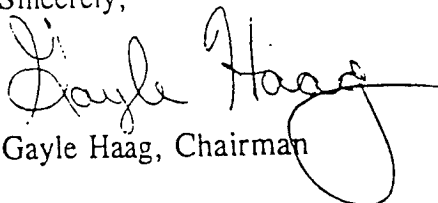
DEPARTMENT OF  
WATER RESOURCES

Dear Mike,

We believe the ground water and surface water within the Republican River Basin are hydrologically connected affecting administration of the Republican River Compact and that it would be in the public interest to establish an integrated management area to manage these waters. Therefore, the Middle Republican Natural Resources District hereby requests that the affected appropriators, the affected surface water project sponsors, and the Department of Water Resources consult with our district and that studies and a hearing be held on the preparation of a joint action plan for the integrated management of hydrologically connected groundwater and surface water. This request is placed under provisions of Section 34. of Legislative Bill 108 recently passed by the Nebraska Legislature and signed into law by the Governor on April 12, 1996.

We also believe that integrated water management of ground water and surface water within the Nebraska portion of the Republican Basin should involve the Upper Republican, Lower Republican and Tri-Basin Natural Resources Districts. We therefore, request that these natural resources districts be considered and made aware of any studies, hearings or related activities resulting from this request.

Sincerely,

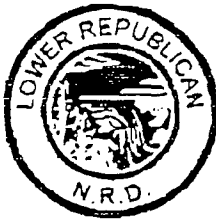
  
Gayle Haag, Chairman

cc: Basin NRD's  
Basin Irrigation Districts

Exhibit # 11

Submitted by D. LaWhite

December 2, 2002



# Lower Republic Natural Resources District

PHONE (308) 928-2182 • FAX 308-928-2317  
BOX 678 • ALMA, NEBRASKA 68920

July 26, 1996

RECEIVED

JUL 30 1996

DEPARTMENT OF  
WATER RESOURCE

Mr. J. Michael Jess, Director  
Nebraska Department of Water Resources  
P.O. Box 68509-4676

Dear Mike,

The Lower Republican Natural Resources District is requesting the assistance of the Nebraska Department of Water Resources for the Republican River Basin, and specifically our NRD, to conduct the appropriate study(s), and assist with a hearing to be held on the preparation of a joint action plan for the integrated management of the Basin's hydrologically connected groundwater and surface water. We ask that the Department of Water Resource consult with our NRD during this process. We request this assistance as identified in the provisions of Section 34 of LB108 recently passed by the Nebraska Legislature and signed into law by the Governor on April 12, 1996.

We appreciate your assistance as identified in this request. We further ask that the Republican River Basin NRDs be considered and made aware of any studies, hearings or related activities resulting from this request.

Sincerely,

Jay Ziegler, Chairman

p.c. Basin NRDs  
Basin Irrigation Districts  
All LRNRD Directors



Perkins Chase and  
Dundy Counties

Upper Republican  
NATURAL RESOURCE DISTRICT

Headquarters In Imperial  
P.O. Box 1140  
135 W. 5th St.  
Phone 308-882-5173  
308-882-5584  
FAX Number 308-882-4521

DEPARTMENT OF JUSTICE

MAY 15 2003

STATE OF NEBRASKA

August 7, 1996

Michael Jess, Director  
Nebraska Department of Water Resources  
P O Box 94676  
Lincoln, NE 68509-4676

Dear Mike:

Enclosed is a request by the Upper Republican Natural Resources District to designate the District as a integrated management area.

This request was adopted by the Board of Directors at their regular board meeting on July 2, 1996.

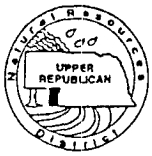
Your approval of this request would be appreciated.

Sincerely,

Ron Milner

Enclosures

RM:dn



Perkins Chase and  
Dundy Counties

Upper Republican  
NATURAL RESOURCE DISTRICT

Headquarters In Imperial  
P.O. Box 1140  
135 W. 5th St.  
Phone 308-882-5173  
308-882-5584  
FAX Number 308-882-4521

July 18, 1996

Mr. Michael Jess, Director  
Nebraska Department of Water Resources  
P O Box 94676  
Lincoln, NE 68509-4676

Dear Mike,

We believe the ground water and surface water within the Republican River Basin are hydrologically connected affecting administration of the Republican River Compact and that it would be in the public interest to establish an intergrated management area to manage these waters. Therefore, the Upper Republican Natural Resources District hereby requests that the affected appropriators, the affected surface water project sponsors, and the Department of Water Resources consult with our 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. This request is place under provisions of Section 34, of Legislative Bill 108 recently passed by the Nebraska Legislature and signed into law by the Governor on April 12, 1996.

We also believe that integrated water management of ground water and surface water within the Nebraska portion of the Republican Basin should involve the Middle Republican, Lower Republican, and Tri-Basin Natural Resources District. We therefore, request that these Natural Resources Districts be considered and made aware of any studies, hearings, or related activities resulting from this request.

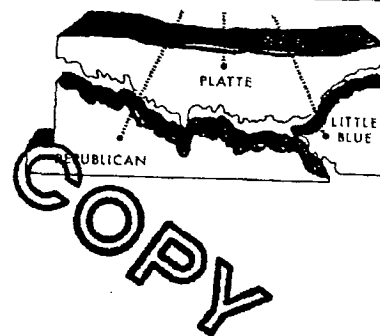
Sincerely,

Dean Large, Chairman

# Tri-Basin NATURAL RESOURCES DISTRICT

1308 Second Street  
Holdrege, Nebraska 68949  
Telephone (308) 995-6688  
Fax (308) 995-6992

August 14, 1996



General Manager  
JOHN THORBURN

Mr. J. Michael Jess, Director  
NE Department of Water Resources  
P.O. Box 94676  
Lincoln NE 68509-4676

Chairman  
KAY LAVENE  
Bertrand, Nebraska

Vice Chairman  
DAVID NELSON  
Upland, Nebraska

Secretary  
PHYLLIS JOHNSON  
Bertrand, Nebraska

Treasurer  
BRADLEY LUNDEEN  
Wilcox, Nebraska

RUSSELL EDEAL  
Loomis, Nebraska

HAROLD D. ERICKSON  
Holdrege, Nebraska

DICK HELMS  
Arapahoe, Nebraska

GARY LINDSTROM  
Wilcox, Nebraska

DAVID NICKFL  
Kearney, Nebraska

DAVID OLSEN  
Minden, Nebraska

DAVID RAFFEY  
Kearney, Nebraska

LARRY REYNOLDS  
Lexington, Nebraska

RAY WINZ  
Holdrege, Nebraska

Dear Mr. Jess:

The Board of Directors of Tri-Basin Natural Resources District have considered the matter of inter-connected surface and groundwater resources within the Republican River Basin in our district. We believe that inter-connected water resources should be managed so that they will provide sustained benefits for all water users. We also recognize that responsible management of inter-connected water resources is necessary to avoid interstate disputes.

It is our opinion that there are areas within our district where groundwater and surface water resources are connected. Tri-Basin Natural Resources District therefore requests that the Department of Water Resources initiate studies to more precisely define the extent of those areas. The results of these studies will allow our district to determine whether to initiate an integrated water resources management joint action plan, as allowed by Section 34 of LB 108, as enacted by the Nebraska Unicameral.

We would point out that within the Republican River Basin in our district there are large areas of enclosed basins which can not and do not contribute to the waters of the Republican River. Furthermore, it has been documented that some tributaries of the Republican River in our district have had enhanced average annual flows in recent years, due to incidental groundwater recharge from Central Nebraska Public Power and Irrigation District's canal system. We do not believe there is a need for regulation of inter-connected water resources in either of these two situations.

Finally, we believe that if the need arises to develop a joint action plan to manage integrated water resources, implementation of that plan should be governed by a steering committee composed of directors from affected natural resources districts.

Thank you for considering our request. We look forward to working with the Department of Water Resources on this effort.

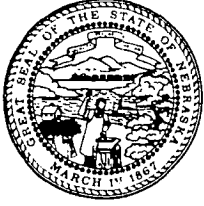
Sincerely,

Kay Lavene, Chairman  
Tri-Basin Natural Resources District

cc: Governor E. Benjamin Nelson  
State Senator Ed Schrock  
State Senator Owen Elmer  
State Senator Chris Beutler  
Upper Republican NRD  
Middle Republican NRD  
Lower Republican NRD



# STATE OF NEBRASKA



DEPARTMENT OF WATER RESOURCES  
J. Michael Jess  
Director

September 6, 1996

IN REPLY REFER TO:

E. Benjamin Nelson  
Governor

Dean Large, Chairperson  
Upper Republican NRD  
P. O. Box 1140  
Imperial, Nebraska 69033

Jay Ziegler, Chairperson  
Lower Republican NRD  
P. O. Box 618  
Alma, Nebraska 68920

Gayle Haag, Chairperson  
Middle Republican NRD  
P. O. Box 81  
Curtis, Nebraska 69025

Kaye Lavene, Chairperson  
Tri-Basin NRD  
1308 Second Street  
Holdrege, Nebraska 68949

Dear Chairpersons:

This letter is to serve as my preliminary determination under the requirements of § 46-656.28(2), R.R.S. 1943, as amended. My preliminary determination is that there is reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to a dispute over the Republican River Compact. While the State of Nebraska does not believe ground water is or was intended to be allocated under the Republican River Compact, the apparent interactions of ground water with surface water is contributing to the interstate dispute.

In order to make this preliminary determination, my staff and I reviewed the records of the Department, including the minutes of the meetings of the Republican River Compact Committee; "The Interim Report of the Nebraska Water Council to Governor E. Benjamin Nelson," dated December, 1994; the ground water management plans for the Upper Republican NRD, the Middle Republican NRD, the Lower Republican NRD, and the Tri-Basin NRD; the Department's "Hydrographic Reports" and USGS "Water Resources Data - Nebraska" showing stream flow and canal diversions; the Department's "Biennial Reports" showing surface water appropriations; and the ground water well registrations data.

The Republican River Compact was passed by the Legislature in 1942 and is unusual in that it does not provide for specific flows to be delivered at the state line, but instead allocates specific quantities of water that may be consumed in each of the three states involved. The minutes of the Republican River Compact Committee meetings show that for many years the use of ground water has been included in some manner in the compilation of water use data for purposes of determining compliance with the Compact. (It should be noted that Nebraska officials continue to object to this methodology.) The minutes also show that since the 1980's, Kansas has claimed that Nebraska is routinely overusing its allocation, in part, because of ground water consumption. The

c:\sharon\letters\9-6nrd.1tr

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DNR 012217

Large, Haag, Ziegler, Lavene  
September 6, 1996  
Page 2

dispute includes not only whether Nebraska has overused its allotment, but how the ground water use data is compiled.

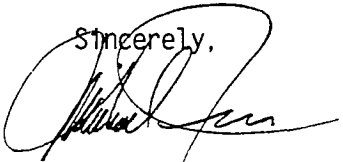
The "Interim Report of the Nebraska Water Council" includes a section on the Republican River Basin (pages 36-41) which documents the dispute. The Council also recognized that Kansas has begun preparation for litigation against Nebraska and recommended the passage of what became LB108.

The review of the Department's "Hydrographic Reports" and the USGS "Water Resources Data - Nebraska" shows that there have been declining stream flows in the Republican River Basin over the last 30 years. (See attached graph of Republican River near Orleans.)

The Department's data base on water well registrations show that new water wells continue to be constructed within the basin. (See accompanying graph.)

All of these factors support a preliminary determination that there is reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to a dispute over the Republican River Compact. Accordingly, I am authorizing Ann Bleed to continue to work with each of the districts to determine the extent and precise cause of the conflicts.

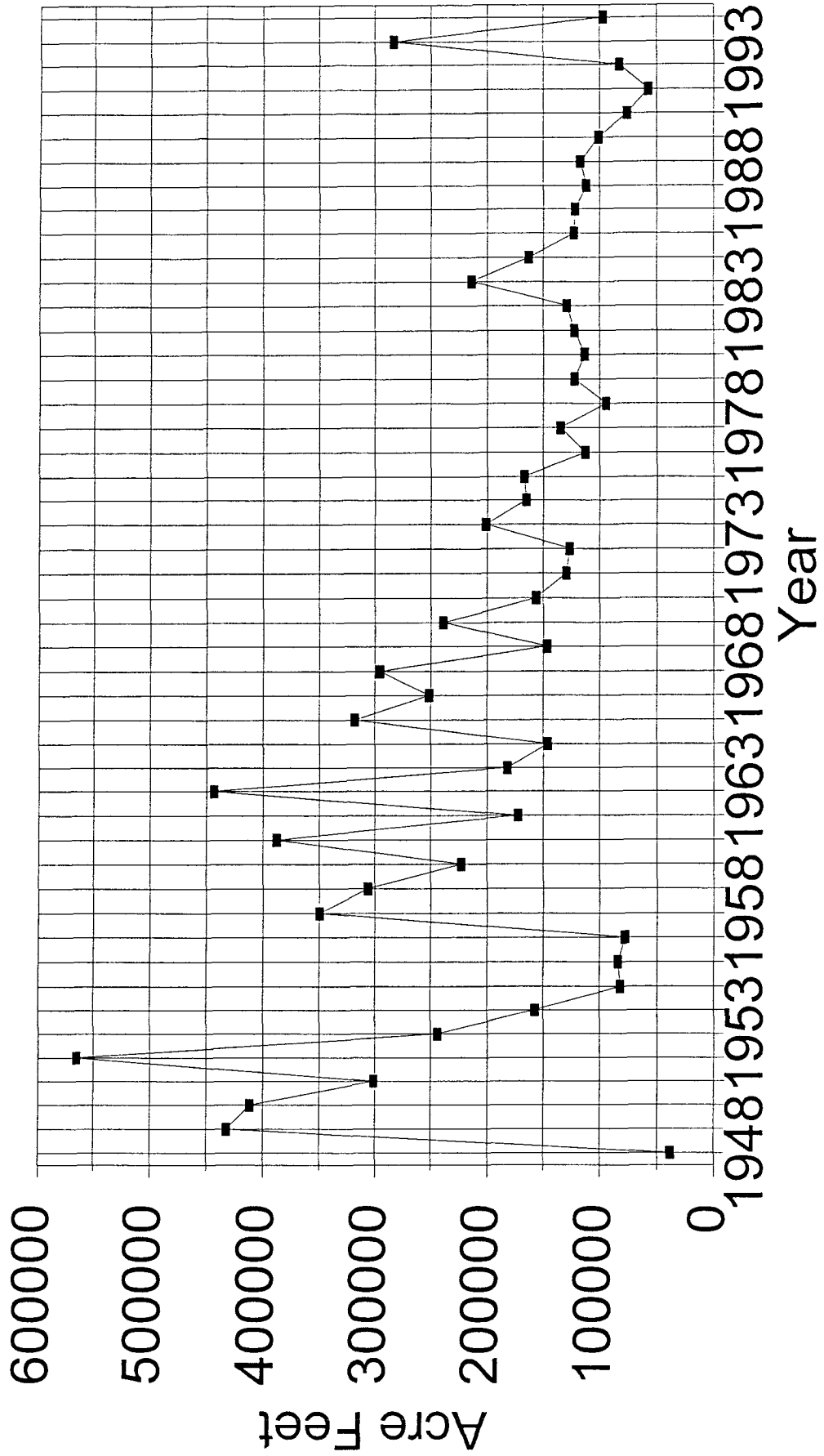
Sincerely,

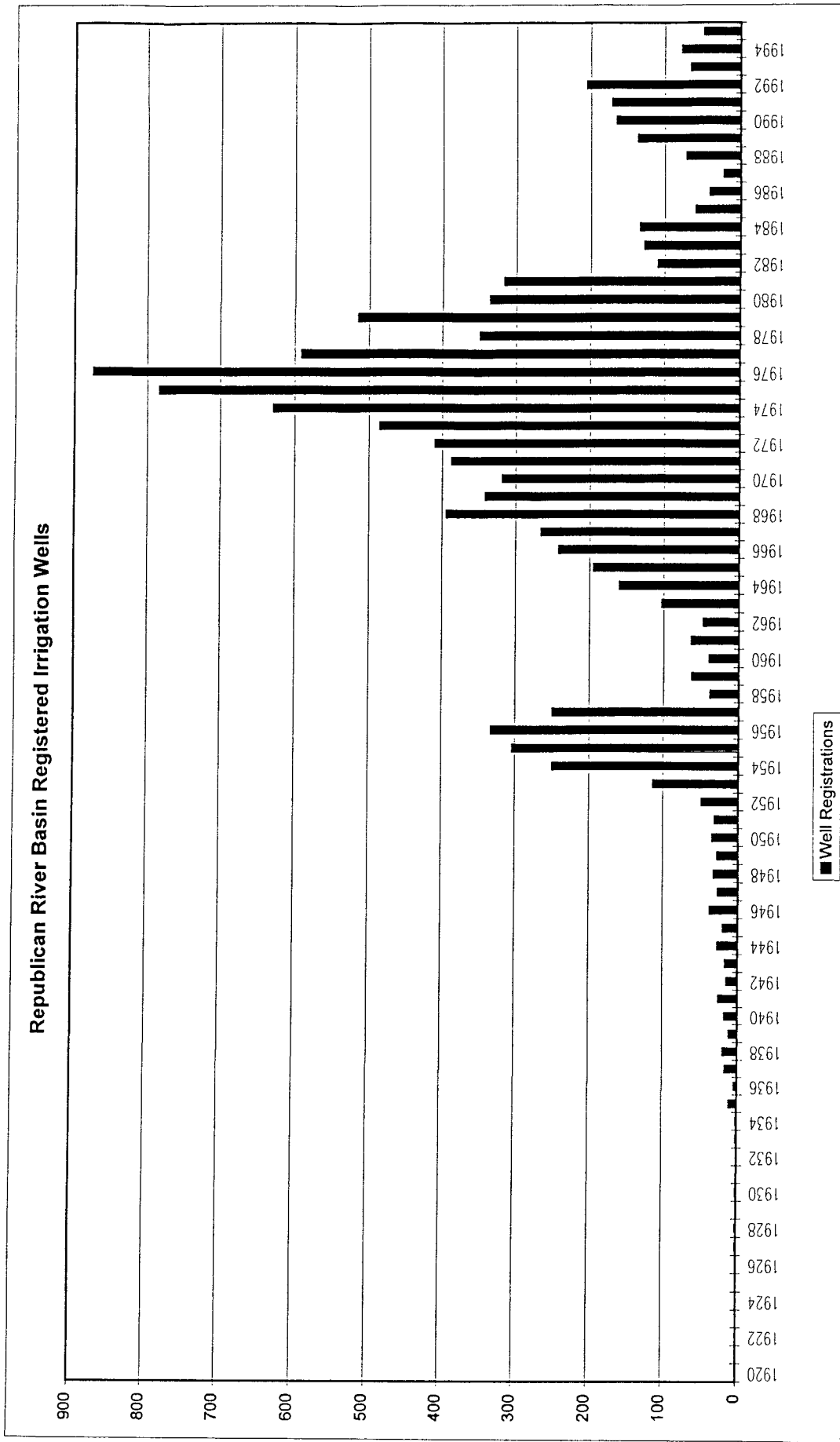


J. Michael Jess  
Director

JMJ:SF:sg  
Enclosures

# Republican River Orleans





before file 108

Tri-Basin NRD  
1308 Second St.  
Holdrege, NE 68949



Phone: (308) 995-6688  
Toll Free: 1-877-995-6688  
Fax: (308) 995-6992  
Email: tribasin@wil-net.com

*Natural Resources District*

June 9, 1999

General Manager  
JOHN THORBURN

Chairman  
DAVID NELSON  
Upland, Nebraska

Vice Chairman  
BRADLEY LUNDEEN  
Wilcox, Nebraska

Secretary  
DAVID NICKEL  
Kearney, Nebraska

Treasurer  
PHYLLIS JOHNSON  
Bertrand, Nebraska

RUSSELL EDEAL  
Loomis, Nebraska

HAROLD D. ERICKSON  
Holdrege, Nebraska

DICK HELMS  
Arapahoe, Nebraska

GARY LINDSTROM  
Wilcox, Nebraska

JAMES MORSE  
Loomis, Nebraska

DAVID OLSEN  
Minden, Nebraska

DAVID RAFFETY  
Kearney, Nebraska

LARRY REYNOLDS  
Lexington, Nebraska

RAY WINZ  
Holdrege, Nebraska

Mr. Roger Patterson, Director  
NE Dep't. of Water Resources  
POB 94676  
Lincoln NE 68509-4676

Dear Roger:

On behalf of the Board of Directors of Tri-Basin Natural Resources District, I respectfully request that the NE Department of Water Resources indefinitely suspend its study of the inter-relationship between groundwater and surface water resources in the Republican River basin. This study was initiated by the Department of Water Resources in September, 1996 at the request of all four Republican basin NRDs, in conformance to NE RRS (1943) ss 46-656.28.

Our NRD requests this suspension because we have been informed by the NE Attorney General's Office that continuing work on this study at this time could harm Nebraska's defense in the lawsuit filed by the state of Kansas. We defer to the Attorney General's expertise in these matters.

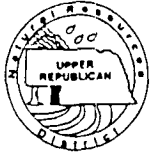
Please contact me if you have questions, or if you would like to discuss this matter in further detail. Thank you for your consideration of this request.

Sincerely,

John Thorburn  
General Manager

RECEIVED

cc: Beverly Bogle-Louthan, NRD Legal Counsel  
Dean Edson, NARD Exec. Director  
Sen. Ed Schrock  
Dave Cookson, NE Attorney General's Office  
Republican Basin NRDs  
TBNRD Directors



Perkins Chase and  
Dundy Counties  
Headquarters In Imperial

Upper Republican  
NATURAL RESOURCE DISTRICT

17011 4-21  
LeRoy  
P.O. Box 1140  
135 W. 5th St.  
Imperial, NE 69033  
Phone 308-882-5173  
308-882-5584  
FAX Number 308-882-4521

June 10, 1999

BOARD MEMBERS

Chairman  
Robert Ambrosek  
Haigler, NE 69030

Vice-Chairman  
Greg Pelster  
Elsie, NE 69134

Secretary/Treasurer  
Eugene Haarberg  
Imperial, NE 69033

Kurt Bernhardt  
Lamar, NE 69023

Kenneth Frasier Jr.  
Max, NE 69037

Donn Gengenbach  
Grant, NE 69140

Jerry Kuenning  
Imperial, NE 69033

Dean Large  
Wauneta, NE 69045

Mike Mosel  
Ogallala, NE 69153

Kenny Owens  
Imperial, NE 69033

Floyd Parman  
Benkelman, NE 69021

**Roger Patterson, Director**  
Department of Water Resources  
P.O. Box 94676  
Lincoln, NE 68509-4676

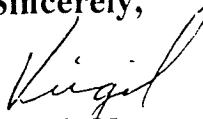
**Dear Mr. Patterson:**

At their June 1999 meeting, the Board of Directors of the Upper Republican Natural Resources District voted to request the Department of Water Resources to suspend the LB 108 study being conducted for the Republican River Basin Natural Resources Districts. This action was taken in response to a request from the Office of the Nebraska Attorney General.

Please contact me if you have questions or desire additional information regarding this request.

Thank you.

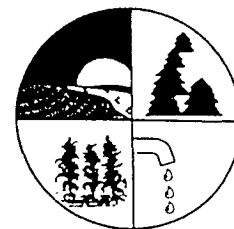
Sincerely,

  
Virgil Norton  
Manager

RECEIVED

# Middle Republican Natural Resources District

P.O. Box 81 • Curtis, Nebraska 69025 • Phone (308) 367-4281 • FAX (308) 367-4285



June 21, 1999

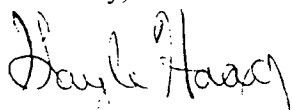
Mr. Roger Patterson, Director  
Nebr. Department of Water Resources  
P.O. Box 94676  
Lincoln, NE 68509-4676

Dear Roger,

We have been advised, by the Nebraska Attorney General's Office, that the present LB 108 Study process could be in conflict with the lawsuit Kansas filed against Nebraska regarding use of Republican River waters. The main area of concern is the mandated report and public hearings called for in the LB 108 process. This study was initiated by your agency in September of 1996, at the request of all four Republican Basin NRDs, before the lawsuit was filed.

On behalf of the Board of Directors of the Middle Republican Natural Resources District; I hereby request that once the study data has been collected, by your agency, that you temporarily suspend the LB 108 process and not proceed with any reports or public hearings until a time satisfactory to the Attorney General. We make this request in the best interest of our State and the Republican River Basin of Nebraska.

Sincerely,

  
Gayle Haag, Chairman

c.c. David Cookson, AG Office  
Dean Edson, NARD  
Senator Tom Baker  
Republican Basin NRDs  
Jon Schroeder, NRD Legal Counsel

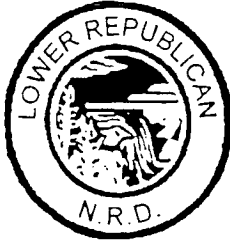
RECEIVED

JUN 23 1999

DEPARTMENT OF  
WATER RESOURCES

DNR 012224





# Lower Republican Natural Resources District

PHONE (308) 928-2182 • FAX 308-928-2317  
BOX 618 • ALMA, NEBRASKA 68920

*LeRoy*  
File Rep R1  
109 Street

June 21, 1999

Mr. Roger Patterson, Director  
Nebraska Department of Water Resources  
PO Box 94676  
Lincoln NE 68509-4676

Re: LB 108

Dear Mr. Patterson,

The Lower Republican Natural Resources District (LRNRD) Board of Directors respectfully requests that the Nebraska Department of Water Resources indefinitely suspend the study of the inter-relationship between groundwater and surface water resources in the Republican River Basin. This request is in response to the Nebraska Attorney General Office's concern that the interpretation of the data collected may create a conflicting account to the expert witness testimony that will be presented during Nebraska's defense in the Kansas vs. Nebraska Republican River lawsuit.

The LRNRD strongly supports the need for the collected data to be analyzed. However, we will defer to the Nebraska Attorney General's expertise in this matter.

Please contact me if you have any questions, or if you would like to discuss this matter in further detail. Thank you for your consideration in the matter.

Sincerely,

David Eigenberg  
General Manager  
Lower Republican Natural Resources District

DE/cm

Copy: Terry Woollen, Chairman LRNRD Board Directors

RECEIVED

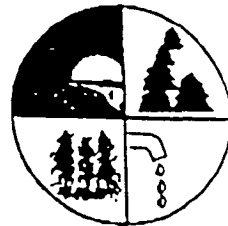
JUN 23 1999

DEPARTMENT OF  
WATER RESOURCES

DNR 012225

# Middle Republican Natural Resources District

P.O. Box 81 • Curtis, Nebraska 69025 • Phone (308) 367-4281 • FAX (308) 367-4285



May 14, 2002

Roger Patterson, Director  
Nebraska Department of Natural Resources  
301 Centennial Mall South  
PO Box 94676  
Lincoln NE, 68509-4676

Dear Mr. Patterson,

In July of 1996 this district requested that the Department of Natural Resources (then Water Resources) take steps, under the provisions provided for in LB 108, to conduct studies and assist the district in the preparation of a joint action plan for hydrologically connected ground and surface waters. In June of 1999 we requested that that process be suspended in light of the lawsuit filed by Kansas.

The need to continue with ground water management in the Republican Basin and specifically in the Middle Republican Natural Resources District brings the board of directors of the Middle Republican Natural Resources District to the point where we would request that the LB 108 process, as incorporated into the Ground Water Management and Protection Act as section 46-656.28, be resumed. The collection of data for the purpose of determining the cause of conflicts and the extent of the area affected should be started anew with the goal of completing the study on or about July of 2003. It is the intent of this board that the modeling effort by the USGS and any other appropriate new modeling efforts be used to supplement or replace any study that may have been started or completed as a result of the request initiated in 1996.

Sincerely,

Gayle Haag, Chairman

Cc: Senator Tom Baker  
Basin NRDs  
Basin Irrigation Districts  
Dave Cookson, AG Office

Tri-Basin NRD  
1308 Second St.  
Holdrege, NE 68949



Phone: (308) 995-6688  
Toll Free: 1-877-995-6688  
Fax: (308) 995-6992  
Email: tribasin@nebi.com

*Natural Resources District*

General Manager  
JOHN THORBURN

May 16, 2002

Chairman  
DAVID NELSON  
Upland, Nebraska

Mr. Roger Patterson, Director  
NE Dep't. of Natural Resources  
POB 94676  
Lincoln NE 68509-4676

COPY

Vice Chairman  
BRADLEY LUNDEEN  
Wilcox, Nebraska

Dear Mr. <sup>Roger</sup> Patterson:

Secretary  
DAVID NICKEL  
Kearney, Nebraska

The Tri-Basin Natural Resources District Board of Directors held their regular monthly board meeting last Tuesday (May 14, 2002). During this meeting, the board decided that our district should request that the Department of Natural Resources resume collecting data and developing modeling tools associated with the "LB 108" study of groundwater and surface water resources of the Republican River basin.

Treasurer  
PHYLLIS JOHNSON  
Bertrand, Nebraska

Our NRD initially asked the then Department of Water Resources to undertake a study of the interconnection of groundwater and surface water in the Republican basin in August, 1996. The department suspended the study in 1999, once again at our request, after Kansas filed suit against Nebraska.

HAROLD D. ERICKSON  
Holdrege, Nebraska

TODD GARRELT  
Holdrege, Nebraska

Our district is now considering changes in our groundwater management plan. Our district will need data from this study to help us evaluate the interrelationship between groundwater and surface water resources within our district.

DICK HELMS  
Arapahoe, Nebraska

GARY LINDSTROM  
Wilcox, Nebraska

We believe that our current request is consistent with guidance provided to us by Attorney General Don Stenberg in his letter of May 8, 2002. Please call me at your convenience if you have questions or need additional information. Thank you for your consideration of this request.

JAMES MORSE  
Loomis, Nebraska

DAVID OLSEN  
Minden, Nebraska

Sincerely,

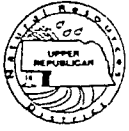
DAVID RAFFETY  
Kearney, Nebraska

John Thorburn  
General Manager

LARRY REYNOLDS  
Lexington, Nebraska

RAY WINZ  
Holdrege, Nebraska

Cc: TBNRD Directors  
David Cookson, Assistant Attorney General  
Mike Clements, Lower Republican NRD  
Bob Hipple, Upper Republican NRD  
Dan Smith, Middle Republican NRD



Perkins Chase and  
Dundy Counties  
Headquarters In Imperial

Upper Republican  
NATURAL RESOURCE DISTRICT

P.O. Box 1140  
135 W. 5th St.  
Imperial, NE 69033  
Phone 308-882-5173  
308-882-5584  
FAX Number 308-882-4521

May 22, 2002

Mr. Roger Patterson, Director  
NE Dept. of Natural Resources  
P.O. Box 94676  
Lincoln, NE 68509-4676

Re: Reinstatement of the "LB 108" planning process.

Dear Mr. Patterson:

The Board of Directors of the Upper Republican Natural Resources District passed a resolution to request resumption of certain aspects of the "LB 108" planning process. This was at their regular meeting on May 14, 2002.

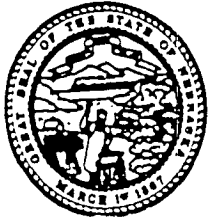
This request is in line with the gathering of additional data to evaluate changes we may need to make in our groundwater management plan. We believe this request is consistent with the guidance provided to you in the letter from the Attorney General's office on this subject and dated May 8, 2002.

Thank you for your consideration of this request. If you have any questions concerning the request or this letter, please contact me.

Sincerely,

Bob Hipple  
General Manager

## STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
DirectorMike Johanns  
Governor

June 4, 2002

IN REPLY REFER TO:

Gayle Haag, Chairman  
Middle Republican NRD  
HC 66, Box 25A  
Bartley, NE 69020

Dear Mr. Haag:

The Middle Republican Natural Resources District recently asked the Department of Natural Resources to resume a study of the relationship between ground water and surface water in the district. That study, which was initiated in July 1996 but was suspended from June of 1999 until now, we believe will provide your district and the state with a much better understanding of the relationship between ground water and surface water and whether preparation of a joint action plan for the integrated management of hydrologically connected waters is necessary. Given the current circumstances in the Basin, a temporary suspension in the drilling of certain new water wells in the district until that study is completed is consistent with Nebraska statutes and is supported by our Department. We anticipate that the study will be completed by mid-summer 2003. When the study results are available, decisions can then be made about whether the temporary suspension on drilling should remain or whether new wells could be allowed consistent with the district's groundwater management objectives. Our department looks forward to working with the district as that study proceeds.

Sincerely,

A handwritten signature in cursive script that reads "Roger K. Patterson".

Roger Patterson  
Director

cb

# STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES  
Roger K. Patterson  
Director

November 14, 2002

IN REPLY REFER TO:

Mike Johanns  
Governor

Dave Walton, Chairman  
Lower Republican Natural Resources District  
PO Box 618  
Alma, NE 68920-0618

Dear Mr. Walton:

Thank you for your letter dated October 11, 2002, requesting that the Department of Natural Resources resume a study of the relationship between ground water and surface water in the district. We have received similar requests from other NRDs in the Republican River Basin. Consequently we have resumed the study. We anticipate that the study will be completed by mid-summer 2003. Our department looks forward to working with the district as the study proceeds.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roger K. Patterson".

Roger K. Patterson  
Director

pjb  
cc: Dave Cookson

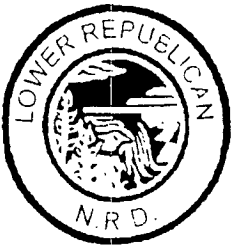
clrshare\patterson

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DNR 012230



# Lower Republican Natural Resources District

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October 11, 2002

Roger Patterson, Director  
Nebraska Department of Natural Resources  
301 Centennial Mall South  
PO Box 94676  
Lincoln, NE 68509-4676

Dear Mr. Patterson,

In July of 1996 this district requested that the Department of Natural Resources (then Water Resources) take steps, under the provisions provided for in LB108, to conduct studies and assist the district in the preparation of a joint action plan for hydrologically connected ground and surface waters. In June of 1999 we requested that the process be suspended in light of the lawsuit filed by Kansas.

The need to continue with ground water management in the Republican Basin and specifically in the Lower Republican Natural Resources District brings the board of directors of the Lower Republican Natural Resources District to the point where we would request that the LB108 process, as incorporated into the Ground Water Management and Protection Act as section 46-656.28, be resumed. The collection of data for the purpose of determining the cause of conflicts and the extent of the area affected should be started anew with the goal of completing the study on or about July of 2003. It is the intent of the board that any appropriate new modeling efforts be used to supplement or replace any study that may have been started or completed as a result of the request initiated in 1996.

Sincerely,

Dave Walton  
Chairman

MC/cm

copy: Sen. Schrock  
Basin NRD's  
Basin Irrigation Districts  
Dave Cookson, AG Office