Case #(CU)

Republican River Settlement

Kansas v. Nebraska and Colorado

Background

- Republican River Compact – 1943
- Divided the waters of the river between Nebraska, Kansas, and Colorado
- "Virgin water supply" is allocated
- Use is measured as Beneficial Consumptive Use

Background cont.

- Kansas filed suit in May 1998
- Major points of Contention
  - Proliferation of well development in Nebraska
  - Chronic overuse by Nebraska in several subbasins
  - Damages for this overuse

Rulings by Special Master

- Groundwater use counts to the extent it depletes streamflow – Jan. 2000
- Compact accounting numbers for 1959-1994 are binding and will not be changed – May 2001

United States Supreme Court ruled on damages in Arkansas case.

Settlement Process

- First Step – Agreement in Principle
  - Agreement of Governors & Attorneys General (April 30, 2002)
- Second Step – Final Settlement Stipulation
  - Agreement of Governors & Attorneys General (December 16, 2002)
- Third Step – Consent Decree
  - Approval of Special Master and U.S. Supreme Court (Spring 2003)

Settlement Agreement

I. Existing Development
II. Compact Accounting
III. Guide Rock
IV. Soil and Water Conservation Measures
V. Dispute Resolution

I. Existing Development

A. Moratorium on new groundwater wells

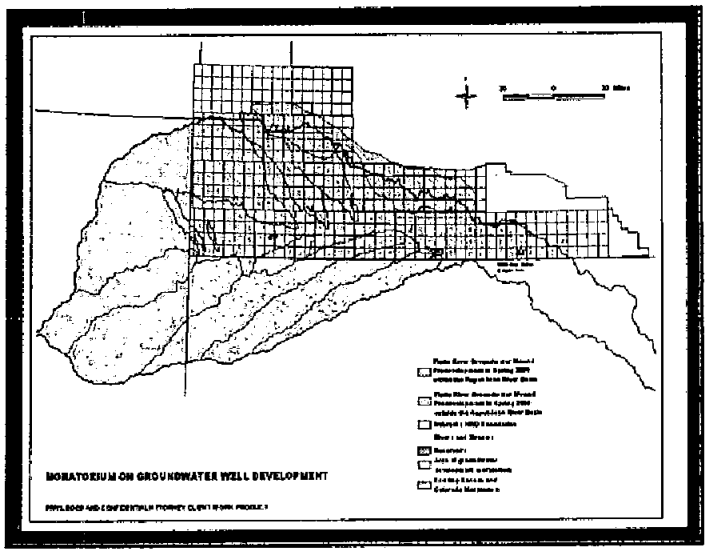
B. Exceptions to moratorium

C. Reporting

A. Moratorium on new groundwater wells

- What - no new wells until new information shows room for more development
- Where - Republican River Basin above Guide Rock, Nebraska (see map)
- When - Adopted and take effect before States submit Final Settlement Stipulation to Special Master in December, 2002

Moratorium



B. Exceptions to moratorium

- "mound wells"
- test holes,
- dewatering <90 days,
- wells pumping <50 gallons per minute
- replacement wells,
- emergency wells,
- transfers of historic use
- new municipal and industrial uses
- wells in Colorado and NW Kansas as long as they don't change their laws to make it easier to drill new wells

C. Reporting – annual reporting demonstrating compliance – April 15 of each year

II. Compact Accounting

A. Sub-basin flexibility

B. Stream flow depletions caused by groundwater consumptive use

C. 5 year rolling averages of VWS, allocations and consumptive use

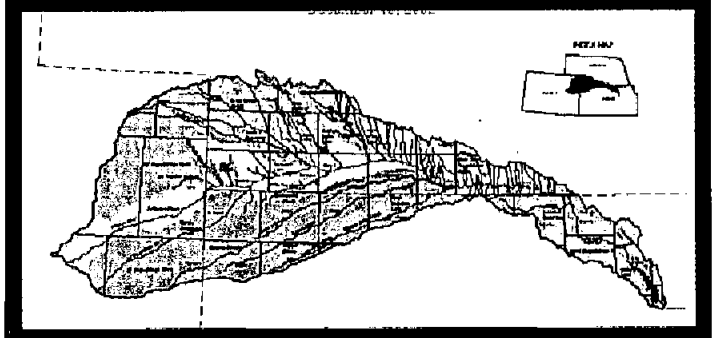
D. Credit for mound water

E. Reporting, measurement and data

A. Sub-basin flexibility

- Specific sub-basin allocations may be exchanged w/in a State as long as you do not exceed the state wide adjusted allocation. Two limitations;
- First limitation – exchange cannot impair another States use of allocation from same sub-basin
- Second limitation – different rules in water short years

Compact designated sub-basins

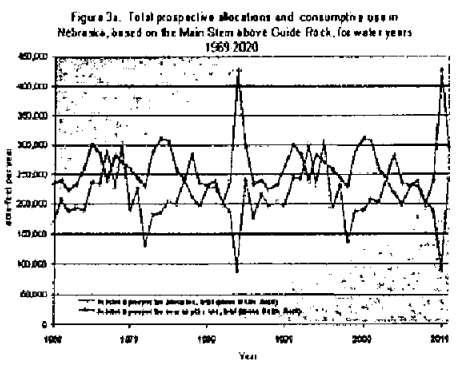


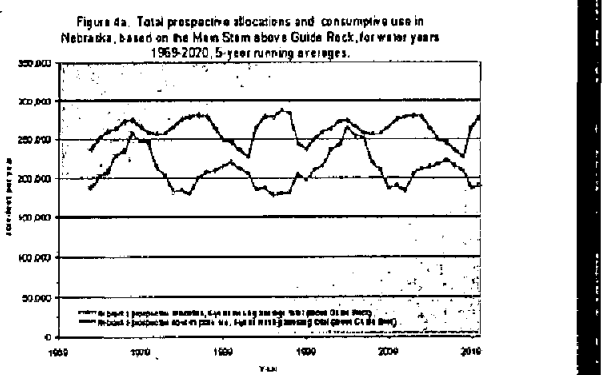
B. Stream flow depletions from groundwater use

- What – stream flow depletions caused by GW consumption will be counted as VWS & BCU at the time and to the extent depletion occurs and will be charged to State where BCU occurs
- How – create Technical Committee to jointly develop groundwater model
- When – finish by July 1, 2003

C. Five-year rolling average

- All Compact accounting; virgin water supply, adjusted allocations and beneficial consumptive use will be done on five-year rolling average. Accounting measures available supply for each State and how much each State used.
- Does not apply in water short years





D. Credit for "mound" water

- Beneficial consumptive use from imported water sources of other river basins shall not count as Compact beneficial consumptive use or virgin water supply
- Credit shall be given for any remaining imported water from other river basins that is reflected in increased stream flow
- Amounts determined by GW model

E. Reporting

- States agree to measurement techniques, data collection and reporting
- Likely include meters on all diversions, surface water and groundwater
- Water usage
- Better data – better answers

III. Guide Rock

A. Additional Water Administration

B. Water short year administration

1. Nebraska action
2. Colorado action
3. Northwest Kansas action
4. Timing and notice of projected supply trigger
5. Modification of projected supply trigger

A. Additional water administration

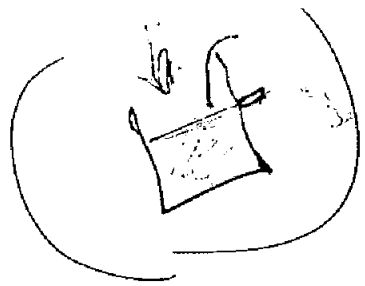
1. Consistent with Compact entitlement -provide priority date for Kansas Bostwick Irrigation District
2. Close junior natural flow rights when water needed for diversion at Guide Rock and projected/actual irrigation supply is less than 130,000 acre feet of storage available from HCR
3. Protect storage releases from HCR for delivery at Guide Rock
4. KS, NE and the Bureau agree to take action to minimize bypass flows at Courtland-Superior diversion dam

B. Water Short Year Administration

- What – the projected supply trigger will be in effect in those years when the projected or actual irrigation supply is less than 119,000 a.f. of storage available from HCR
- Who – when triggered the States will take additional actions
- When – determination of trigger year begins on October 1 and becomes final on June 30th of each year

B. Water Short Year Administration
1. Nebraska action

- What
  - Limit beneficial consumptive use in designated Compact tributaries to sum of specific allocations and share of unallocated sub-basin supply
  - BCU above Guide Rock to not more than NE allocation above Guide Rock
  - NE may offset overuse with imported water if imported water is useable by KS



B. Water Short Year Administration
1. Nebraska action

- How
  - NE may use one or more of several measures to maintain BCU within allocation (includes alternate supplies for NBID, allocation adjustments for alluvial wells, dry year leasing, adjustments to multi-year allocations for non-alluvial wells, reduction in irrigated acres, and any other measures) – Nebraska's Decision

B. Water Short Year Administration
1. Nebraska action

- Compact accounting
  - Compact accounting in water short year will be calculated on a two-year running average
  - Nebraska has option to use three year running average by implementing measures when hit 130,000 AF trigger

B. Water Short Year Administration
2. Colorado action

- Colorado agrees to limit its available sub-basin flexibility to the extent that any portion of Colorado's allocation from Beaver Creek cannot be used on any other sub-basin in Colorado

B. Water Short Year Administration
3. Northwest Kansas action

- Kansas agrees to limit beneficial consumptive use in designated subbasins to sum of specific and allocations plus Kansas' share of unallocated supply

B. Water Short Year Administration
4. Modification of projected supply trigger

- If system operations enhancements below HCR increase the useable supply to Bostwick irrigation districts, the projected supply trigger will be adjusted as agreed to by the States and the United States in order to equitably share the benefits of such enhancements

IV. Soil and Water Conservation Measures

A. Account for evaporation from ponds greater than 15 AF as beneficial consumptive use.

B. Study feasibility of long-term impact of soil and water conservation measures – US 75%, states 25%

V. Dispute Resolution

- Future disputes must go to RRCA before suit can be filed
- Non-binding arbitration or other dispute resolution technique will be used

Schedule

Planned and proposed action, for information purposes only

Action	Date
• Well Moratorium	• By December 15, 2002
• Regulate junior diverters Harlan-County Dam to Guide Rock in Water-Short Years	• January 1, 2003 and thereafter
• Protect storage water Harlan-County Dam to Guide Rock	• January 1, 2004 and thereafter
• Complete RRCA Groundwater Model and approval by the States	• July 1, 2003 unless in arbitration

Schedule

Planned and proposed action, for information purposes only

Action	Date
• First year Water-Short Year Administration compliance	• 2006 (if Water-Short Year Administration year, 2-year running average is 2005-2006)
• First normal year compliance	• 2007 (5-year running average from 2003-2007)
• Data exchange under RRCA Accounting Procedures Section V.	• April 15, 2004 (for the 2003 year)
• Non-Federal Reservoir inventory	• By December 31, 2004

Schedule

Planned and proposed action, for information purposes only

Action	Date
• Conservation Measures Study	• Within 5 years of RRCA approval
• System Improvement Study – Feasibility	• October 2004 – September 2007
• NE-NRD actions;	
– Proposed revised rules and regulations for transfers and meters	• December, 2003
– Acres certified	• December, 2004
– Wells metered	• December, 2005

Summary

- No damages to Kansas – either money or water
- Maintain our existing development
  - Cut back use in dry years
- Credit for imported water
- Flexibility to use water anywhere in state – above Guide Rock in dry years
- Compact Accounting will use "averages"
- Nebraska can decide how we use our allocation
- Process for future disputes

NEBRASKA
Department of Natural Resources

Nebraska Department of Natural Resources

Thank-you

Settlement Presentation to TBNRD

October 28, 2002

Information Needs DNR & NRD's

- **How much did we use?**
  - Consumptive Use (Preliminary as of 10-14-02)
    - Historic, Current, Future
    - Location: Sub-basins, Main stem reaches (4), NRD
    - Source: Surface, Ground

Information Needs DNR & NRD's

- **How much do we get? (Preliminary as of 10-14-02)**
  - **Supply**
    - **Historic, Current, Future**
    - **Location: Sub-basins, Main stem reaches (4), NRD**
    - **Source: Surface, Ground**

Nebraska's Allocation Consumptive Use in Republican Basin 1984-1992 + 1994 Averages

Nebraska Allocation	Consumptive Use				
	Surface Water	Alluvial Wells	Upland Wells	Total Wells	Total CU
329,900	121,200	160,400	35,700	196,000	317,300
Percentage	38%	51%	11%	62%	100%

Nebraska's Consumptive Use in Upper Republican Basin 1984-1992 + 1994 Averages

Nebraska Allocation from NRD	Consumptive Use				
	Surface Water	Alluvial Wells	Upland Wells	Total Wells	Total CU
90,057	8,273	38,963	18,900	57,863	66,137

Nebraska's Consumptive Use in Middle Republican Basin 1984-1992 + 1994 Averages

Nebraska Allocation from NRD	Consumptive Use				
	Surface Water	Alluvial Wells	Upland Wells	Total Wells	Total CU
146,673	73,875	64,478	15,350	79,828	153,703

Nebraska's Consumptive Use in Lower Republican Basin 1984-1992 + 1994 Averages

Nebraska Allocation from NRD	Consumptive Use				
	Surface Water	Alluvial Wells	Upland Wells	Total Wells	Total CU
93,212	39,027	56,946	1,450	58,396	97,432

Summary Allocations and CU in Upper, Middle, Lower NRDs

	Upper	Middle	Lower	Total
Allocations	90,000	146,700	93,200	329,900
CU	66,100	153,700	97,400	317,300
Difference	23,900	-7,000	-4200	12,600