

## Trouble double for Nebraska as it prepares for water meeting

By NATE JENKINS / The Associated Press  
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A key water meeting Nebraska officials have anticipated for months as a chance to head off legal action from Kansas could instead give the neighbor more ammunition.

The trouble is double for Nebraska: a likely finding that it broke a requirement by not sending enough water to Kansas via the Republican River the last two years, and an expected failure to produce a strategy to achieve compliance in the future.

Kansas officials won't say whether court action is certain.

But while they won't disclose their plans, frustration with Nebraska's current posture on Republican River issues heading into the August meeting of the Republican River Compact Administration is evident.

Some ideas Nebraska has for getting into compliance in the future, "are not particularly reasonable," said David Barfield, acting chief engineer for the Kansas Division of Water Resources. He pointed to one, multimillion-dollar action already launched in Nebraska to remove decades worth of invasive, water-thirsty vegetation along the river.

The idea was pushed by natural resources districts that control groundwater use in the Republican River Basin and included in a landmark water bill (LB701) meant to help put the state in compliance with a 65-year-old, three-state compact. The compact governs the amount of Republican River water that each state can use: Nebraska gets 49 percent, Kansas gets 40 percent and Colorado gets 11 percent.

"Cutting down trees is a grand idea, but it doesn't necessarily send water to Kansas," Barfield said.

Currently, Barfield said, Nebraska has tools it could use to send Kansas water it is owed.

"The question is, what is Nebraska going to do with those tools?" Barfield said.

"We want water. We don't want plans or possibilities or whatever. We want water."

Nebraska's top water official has said in recent months that she wanted to present to Kansas officials in August specifically how Nebraska planned to comply with the compact in the future, in hopes Kansas wouldn't sue. Kansas officials have said they are already calculating how much they may demand in penalties from Nebraska.

"I had hoped we would have a plan ready," said Ann Bleed, director of the Nebraska Department of Natural Resources. "The reality is, we do not."

"The issues are very difficult," she added. "There's a lot at stake."

Nebraska overused its compact allocation the first three years of a five-year window that is looked at to determine compliance. The last year of the timeframe is this year, so it will not be known definitively until possibly next year whether Nebraska broke the compact relative to the five-year clock.

But there is another compact requirement — measured in two-year increments — that Nebraska deliver a certain amount of water during "water-short" years. The first test of compliance for that is with 2005 and 2006, and numbers could be released at the August meeting showing Nebraska didn't meet those obligations.

Officials in the two states disagree over how to properly account for the water that was used, but that is not expected to change the bottom line.

"Under the most favorable interpretations for Nebraska, they would not be in compliance for the two-year period," Barfield said. Bleed said it will be "very difficult" to show Nebraska complied for the two-year period.

A main challenge in completing a plan for future compliance is uncertainty over future water buyouts, which have become a key piece of the state's strategy to send Kansas enough water. The Department of Natural Resources last month announced agreements for the purchase of 36,000 acre-feet of water from the Frenchman Valley, Riverside and Frenchman-Cambridge irrigation districts.

And in May the Nebraska Bostwick Irrigation District sold 17,500 acre-feet of water to be sent downstream to Kansas.

The water bill passed by lawmakers gives natural resources districts the ability to tax irrigators up to \$10 per acre to help, among other things, buy surface water to send to Kansas.

The bill does not require less groundwater pumping, and the boards of two natural resources districts in the Republican basin recently recommended future water allocations for groundwater irrigators similar to what they are now.

In a letter to Bleed early this year, the chief engineer for the Kansas Division of Water Resources, who has since left the post and was replaced by Barfield, said that "given Nebraska's overuse in every accounting period to date, and the current water-short conditions, it is apparent that there will need to be substantial curtailment or reductions in groundwater pumping."

The board of the Lower Republican Natural Resources District recently voted for 11 inches per year for the next five years.

The board of the Middle Republican Natural Resources District has recommended 12 inches for the next five years; it's currently 13 inches.

While the resources districts are not moving to significantly reduce allocations, one manager said history suggests actual water use will likely be around 8 inches, well below what farmers are allocated. Dan Smith, general manager of the Middle Republican NRD, said the ability for reduced pumping to put the state into compliance is exaggerated.

"We could go with a zero allocation this year and Nebraska would still be out of compliance," Smith said. "We could go with a zero allocation next year and Nebraska could still be out of compliance."

Blead says she's relatively sure, but not certain, the recommended allocations are too high and won't be workable unless other actions, such as buying more surface water, are taken. Should there be a showdown between the state and resources districts over allocations, a never-before-used board appointed by the governor could be called to intervene and make a ruling.

Does Nebraska need to cut groundwater irrigation to convince Kansas that Nebraska is serious about meeting compact demands?

"How Nebraska gets into compliance is their obligation to figure out," Barfield said.

"It certainly seems like it would be a necessary part of the solution, particularly in water-short years," he added later.

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