



Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
Ann Bleed
Director

February 4, 2008

IN REPLY TO:

David Barfield, P.E.
Kansas RRCA Commissioner
Kansas Chief Engineer
Kansas Department of Agriculture
109 S.W. 9th Street
Topeka, KS 66612-1280

Subject: Response to Kansas Dept. of Agriculture's December 19 letter regarding Remedy for Nebraska's Violation of the Decree in *Kansas v. Nebraska & Colorado*, No. 126, Original, U.S. Supreme Court

Dear Commissioner Barfield:

Nebraska has carefully reviewed your letter of December 19, 2007 regarding the remedy for Nebraska's alleged violation of the Decree in *Kansas v. Nebraska and Colorado*, No. 126, Original, U.S. Supreme Court. Our review, which we worked hard to complete within Kansas' imposed 45 day schedule, included a significant effort by Nebraska's technical team to try to understand and replicate your technical analyses. This letter describes some of our concerns with those analyses and the remedy you propose. The letter also briefly describes Nebraska's plans to regulate water for compliance with the Republican River Compact.

Nebraska has the following concerns with the analyses included in the December 19, 2007 letter.

A. Concerns with the Computed Beneficial Consumptive Use Above Guide Rock Calculations

As your letter acknowledges, the Republican Compact Administration has not yet finalized the Republican River Compact Accounting for 2006, because we are still trying to find agreement on several accounting issues. Nebraska has been making sincere efforts to resolve disputes over the accounting issues and has worked hard to provide both Kansas and Colorado with presentations and documents that describe our concerns. We have presented the compact commissioners with information and analyses that point out what we see as flaws and limitations in the currently-used processes for calculating and accounting for the virgin water supply, the imported water supply and consumption of water supplies by the three states. We had hoped that these issues could be resolved by the Republican River Compact Administration Engineering Committee.

As you stated in your letter, a major unresolved issue pertains to how we distribute the Computed Beneficial Consumptive Use from evaporation from Harlan County Lake between Kansas and Nebraska. It was our understanding that Kansas wanted to revise their previous proposal on how to resolve this issue. We were hoping to receive this revision in time for the Republican River Compact Administration Engineering Committee to discuss and hopefully resolve the issue before the special Republican River Compact Administration meeting we had agreed to convene. Until these disputes are resolved, Nebraska cannot accept your estimate of the Computed Beneficial Consumptive Use for 2006.

B. Concerns with Analysis Used to Develop Kansas' Proposed Remedy

We have carefully reviewed the modeling scenarios you used to develop your proposed remedy, which requires Nebraska to reduce ground water irrigated acreage by 515,000 acres with both a shut down of wells within 2 ½ miles of the Republican River and its tributaries and a shut down of wells on groundwater irrigated acreage added after the year 2000. We have several concerns with your analyses.

In our view, the scenarios you used to develop the proposed remedy and the modeling you did to substantiate these numbers have significant logical flaws. The accounting analysis is based on a dry condition, but the ground water modeling scenarios used to develop the depletions to the stream due to ground water pumping is based on a slightly above average precipitation and streamflow conditions. When streamflows are low, not only is the allocation lower, but also the depletions to the stream are less because there is less streamflow to deplete. However, the ground water modeling scenarios used in the analysis included years with higher streamflows, higher allocations, and greater streamflow depletions. The result is an inaccurate comparison between the proposed target and the modeling results. Furthermore, even when we tried to run the Republican River Compact Administration Ground Water Model using the scenario you described, we could not reproduce the numbers you presented in Attachment 5.

C. Concerns with Kansas' Proposed Remedy

Kansas' proposed remedy appears to require Nebraska to restrict its consumptive use of streamflow to a significantly larger degree than required by the Republican River Compact. Based on our attempt to model Kansas' proposed remedy, we determined that Nebraska would have to reduce our consumptive use of streamflow by approximately 50,000 acre-feet per year more than required under the Compact. Kansas' proposed remedy far exceeds what is necessary for compact compliance.

Although Nebraska cannot accept Kansas' proposed remedy, the Nebraska Department of Natural Resources and the Republican River Natural Resources Districts have developed and formally adopted integrated water resources management plans that will enable Nebraska to maintain compliance with the Republican River Compact. These plans include additional regulations on ground water use and the implementation of other actions designed to reduce Nebraska's beneficial consumptive use to appropriate levels. Our analyses indicate that

implementing these plans will keep Nebraska in compliance with the Republican River Compact and will reduce our consumptive use of stream flow in dry years to around the target of 175,000 acre feet Kansas proposed for a dry condition scenario.

In closing, Nebraska is committed to complying with the Republican River Compact. During our special Republican River Compact Administration meeting held via conference call on October 30, 2007, we agreed to schedule a face-to-face special Republican River Compact Administration meeting sometime soon after the Republican River Compact Administration Engineering Committee had met to try to resolve the accounting disputes. Nebraska had hoped to be able to discuss our plans to manage for Compact compliance with both Kansas and Colorado at this meeting. It is Nebraska's hope that the December 19th letter does not indicate that Kansas has lost interest in continuing to meet with Nebraska and Colorado to try to resolve our differences. Although we were surprised and disappointed at the timing of your letter, Nebraska remains committed to working with both Kansas and Colorado to try to resolve these issues and achieve interstate comity within the Republican River Basin.

Sincerely,



Ann Bleed, Director
Dept. of Natural Resources

cc: Nebraska Attorney General Jon Bruning
Dick Wolfe, Colorado RRCA Commissioner
Aaron M. Thompson, U.S. Bureau of Reclamation
Col. Roger Wilson, Jr., U.S. Army Corps of Engineers
James J. DuBois, U.S. Department of Justice