

**From:** [Thompson, Aaron M](#)  
**To:** [Swanda, Marvin R](#)  
**Cc:** [Esplin, Brent](#)  
**Subject:** FW: Commissioner's Briefing on Republican River  
**Date:** Wednesday, May 27, 2009 3:24:07 PM  
**Attachments:** [RepublicanRCompactNeKs\(Comm\)2009\\_05.doc](#)

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Marv, please see the comments below and see if you or Craig can incorporate them.

From: Petersen, Lois Ann  
Sent: Wednesday, May 27, 2009 4:07 PM  
To: Esplin, Brent; Thompson, Aaron M  
Cc: Reichert, Thelene (Tami)  
Subject: Commissioner's Briefing on Republican River

M. Ryan has some questions plus some suggestions on this one:

Current status mentions 2005 & 2006; what about 2007 and 2008?

The Position of Interested Parties - What are NE, KS, and/or CO's position?

Can part of the Background point be deleted? (or at least condensed-Ann's thought)

He also wanted to see these points:

- Compact allocates water
- Federal project designed on the foundation of state compliance
- Groundwater development exploded, especially in Nebraska...Colorado to a lesser extent.
- Kansas gets groundwater included in the accounting (FSS)
- Nebraska & Colorado not in compliance
- Groundwater "economics" make compliance solution politically untenable

Mike is going to giving this briefing paper to Commissioner Connor for a powerpoint presentation we hopefully have time to give him while he's in Colorado for the Western Water Law conference. He'll be back in the office on Monday, so if I could have a revised briefing paper by Friday afternoon?

Thanks,

L. Ann Petersen  
Special Assistant  
Great Plains Regional Office  
406-247-7608

## BUREAU OF RECLAMATION

**BRIEFING FOR:** Commissioner Michael Connor

**DATE:** May 31, 2009

**ISSUE:** **Republican River Compact** (Compact) Settlement Implementation – States of Nebraska and Kansas

**CURRENT STATUS:** Kansas alleges that Nebraska has failed to comply with the Compact by failing to address groundwater depletions in a substantive way, and is proceeding under Final Settlement Stipulation (FSS) Dispute Resolution procedures. Nebraska's use exceeded its allocation for Water Short Years 2005 and 2006 by an estimated 82,000 acre-feet. Kansas provided Nebraska with their proposed remedy for complying with the Compact. Nebraska rejected the remedy proposed by Kansas and raised concerns about Kansas' proposed remedy and the Republican River Compact Administration (RRCA) accounting procedures for calculating each states' consumptive use. The issues submitted to the RRCA by Nebraska and Kansas (States) were addressed but not resolved. On October 21, 2008, the States gave notice they were invoking non-binding arbitration pursuant to the FSS. In preparation for the Arbitration hearing both Nebraska and Kansas submitted a FOIA request to Reclamation. As part of the request from Kansas, Reclamation was also requested to appear as a witness in the Arbitration trial. Reclamation provided depositions to Nebraska and Kansas on April 7, 2009 and provided testimony before the Arbitrator on April 14, 2009.

**BACKGROUND:** The water supply of the Republican River is allocated to the States of Colorado, Kansas and Nebraska through the Republican River Compact approved by Congress in 1943. In 1998 Kansas filed suit in the U.S. Supreme Court alleging Nebraska had violated the Republican River Compact by overusing groundwater which depleted surface flows. The lawsuit resulted in a FSS in 2002 which provided for Compact accounting including stream depletions attributable to groundwater use. Each year since FSS accounting was implemented (2003), Nebraska has exceeded its allocation. The FSS includes requirements for administration of both surface and groundwater to meet Compact allocations. The State of Nebraska enacted LB 962 in 2004 which requires the Department of Natural Resources (DNR) and the natural resource districts (NRDs) to develop an integrated surface water/ground water management plan for fully appropriated basins, which includes the Republican River Basin. DNR and the NRDs have developed and formally adopted integrated water resources management plans they claim will enable Nebraska to maintain compliance with the Compact. Kansas proposed remedy for complying with the Compact included: entry of an order by the Supreme Court finding Nebraska in violation of the Court's decree; payment to Kansas of \$73,365,133 for Nebraska's overuse of basin allocation for Water Short Years 2005 and 2006; and shutdown of wells and groundwater irrigation in Nebraska within 2 ½ miles of the Republican River and its tributaries to the RRCA.

**POSITION OF INTERESTED PARTIES:** Reclamation projects are experiencing water shortages due to depleted inflows to the reservoirs, which is significantly reducing irrigation, recreation, fish and wildlife benefits associated with the projects. Reclamation believes consumptive use in the basin must be reduced to restore stream flows and to bring Nebraska into compliance with the Compact.

**RECOMMENDATION:** Reclamation is fully supportive of the Federal projects and these projects continuing to operate as planned and authorized. Continued operation of these projects requires the protection of existing water rights and restoration of inflows to the reservoirs.

**PREPARED BY:** Michael J. Ryan, Regional Director, Great Plains Region, (406) 247-7600