

**Statement of the Bureau of Reclamation  
Nebraska-Kansas Area Office  
Aaron M. Thompson, Area Manager**

**Regarding Proposed Integrated Management Plan for the  
Lower Republican Natural Resources District**

**January 13, 2011**

**INTRODUCTION**

The U. S. Bureau of Reclamation (Reclamation) recognizes the appropriate role of the State of Nebraska to establish and enforce water policy. While the current State water policy of developing and implementing Integrated Management Plans (IMPs) are a step in the right direction, Reclamation contends that State water law that has evolved following approval of the Compact does not adequately address the physical reality of the hydrological connection between surface and groundwater sources. The legal separation between surface and ground water has lead to overdevelopment of the finite water resource in the Republican River Basin. As a result, the investment of the citizens of the United States in the development of water resource infrastructure is in jeopardy. The irrigation water supplies, recreation, and fish and wildlife benefits are also currently not fulfilling their potential as envisioned and authorized by Congress. The taxpayers of the United States have an expectation that their investment will be protected, which includes water rights held by the Department of the Interior on behalf of the United States.

Reclamation appreciates Lower Republican Natural Resources District's (LRNRD) acknowledgment that the rights and interest of the United States and specifically Reclamation waters within the LRNRD are recognized and respected by this IMP. Reclamation is encouraged by the LRNRD efforts to reduce ground water pumping within their district beyond what was required in the LRNRD's 2008 IMP. Reclamation is also encouraged by LRNRD's efforts to eliminate the practice of carrying forward unused allocations and developing an IMP based on concepts and goals of maintaining a long-term sustainable river basin to achieve compliance with the Compact. Adequately reducing ground water depletions will gradually allow the stream flows to recover, provide equity among water users, and assist Nebraska in achieving long term Compact compliance.

**COMPACT HISTORY**

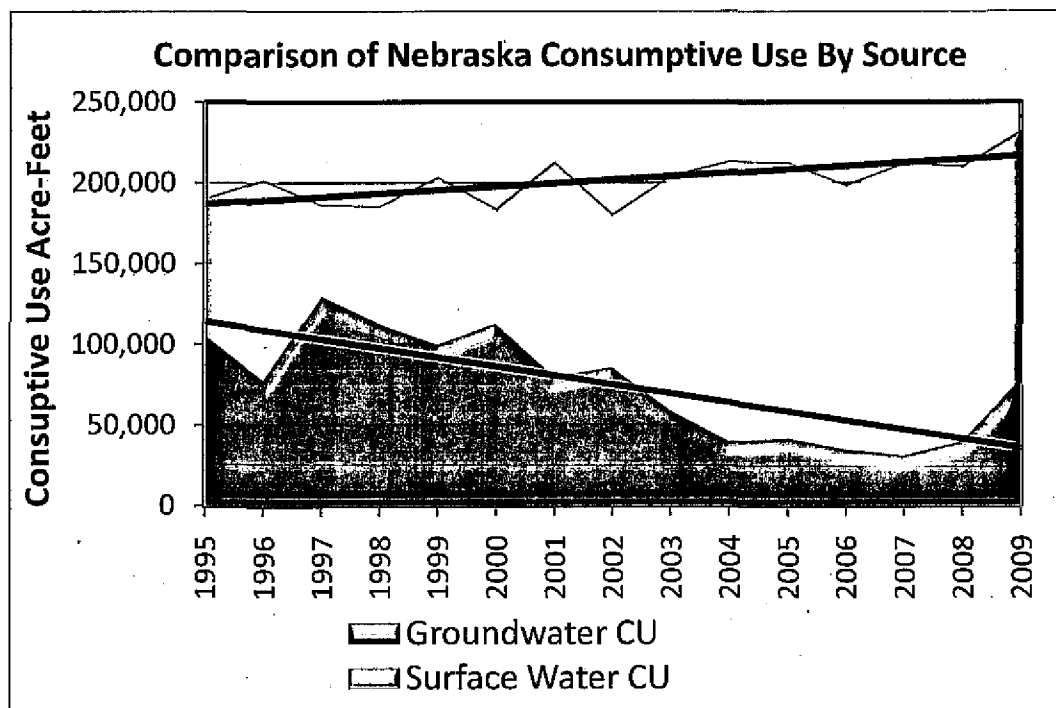
During the late 1930s when Reclamation was initially investigating the water projects in the Basin, we believed the first step to effective Federal water development was negotiation of a compact among Nebraska, Kansas and Colorado allocating water between the states. This was needed to prevent conflict between the states and to insure long term project feasibility, protecting the large Federal investment. Reclamation

requested that the states enter into negotiations to complete this necessary step. Reclamation stated in a 1940 Reconnaissance Report on the Basin (Project Investigation Report No. 41): "To avoid expensive litigation as a result of possible conflicting uses of water in the various states, further developments for irrigation should be preceded by a three-state compact or similar agreement on use of water." This report was one of a many sources of information used by the three states to develop the Compact. Reclamation also assisted the states in the Compact negotiations by preparing hydrology analysis for the Basin and sharing Reclamation's preliminary water development plans with each of the states. The first attempt of the Compact adopted by the states was vetoed by President Roosevelt because the United States did not participate in the negotiations of the Compact. After participation by the United States, the Compact was renegotiated and revised to include Articles 10 and 11. The renegotiated Compact was signed by the states and the representative of the United States on December 31, 1942. Ratification of the Republican River Compact (Compact) by the States and the U.S. Congress followed in 1943.

Once the Compact was finalized, this water allocation laid the framework for the final planning and design of a system of Federal reservoir and irrigation projects that would assist each of the states in developing their allocated share of the Republican River. Reclamation believed that by acquiring necessary state water rights and designing its projects within each state's allocated share of the water, the water supply for these Federal projects would be protected against future water development. Between the late 1940s and 1960s seven Federal dams and reservoirs were constructed in the Basin upstream from the Nebraska-Kansas state line. Reclamation entered into repayment or water service contracts with each of the irrigation districts in the Basin to provide for repayment of the irrigation portion of construction and their associated operation, maintenance, and replacement (OM&R) costs for these projects. This was done with the expectation that the irrigation districts would be able to repay their share of the project costs, protecting the invested interest of the taxpayers of the United States.

## **COMPACT ACCOUNTING**

From 2003 through 2006, Nebraska's allocation averaged 205,000 acre-feet and Nebraska's use averaged 250,000 acre-feet, each year resulting in computed beneficial consumptive use exceeding Nebraska's allocation. During this period Nebraska ground water pumping caused nearly 80% of the ground water depletions to the streamflows in the basin. The following graph shows Nebraska's ground water and surface water consumptive use since 1995. Statistical trend lines have been added to the graph to show how these consumptive uses have changed over time. Ground water consumptive use has gradually increased over time while there has been a sharp decline in surface water consumptive use.



Reclamation testified at each of the past IMP hearings that surface water supplies in the Basin began to decline significantly in the late 1960s when ground water development in the Basin was expanding at a rapid rate. The use of surface water is not the reason Nebraska has failed to be in compliance with the Compact. Surface water use has significantly decreased over time. Because of the current level of ground water use in the basin, ground water depletions have resulted in significant Compact compliance deficits for Nebraska. In water-short years surface water users experience significant water shortages due to the reduced surface water supplies while ground water users have the capability to pump sufficient ground water to meet most of their irrigation demands. As a result, ground water depletions to surface flows have continued to gradually increase reducing the available water for use by our surface water users.

### 2009 ARBITRATION

Reclamation testified at the Republican River Compact Arbitration hearings in April 2009 outlining our concerns that without additional limits and controls on ground water use, then surface water supplies in the Basin will continue to decline making it more difficult for Nebraska to meet Compact compliance in the long term. Reclamation concurs with Arbitrator Dreher's decision that Nebraska's 2008 IMPs are inadequate to ensure compliance with the Compact in dry years and that additional reductions in ground water consumptive use should be made. It is our position that ground water consumptive use must be reduced to a level that will allow base flows to recover to an extent sufficient to provide sustainable surface and ground water supplies and allow Nebraska to consistently achieve both short-term and long-term Compact compliance. This is the only way Nebraska can meet the purpose of this IMP of "sustaining a balance

between water uses and water supplies . . .” Unless ground water depletions are sufficiently reduced to allow surface water supplies to recover, Nebraska will not meet its Compact compliance obligations on a long-term basis.

## CONCERNS AND EXPECTATIONS

Reclamation is very concerned with Nebraska’s failure to meet Compact compliance requirements since Compact compliance accounting was reinitiated in 2003.

Reclamation is even more concerned about the continuing depletion of inflows to the Federal reservoirs. Federal projects were constructed based on the concept that project surface water rights would be protected. The trend of increasing ground water depletions and declining ground water levels in the basin ensures continuing stream flow depletions. While reducing ground water allocations beyond the requirements of the LRNRD’s 2008 IMP is an important first step in controlling groundwater depletions, it is still unclear that these further reductions will be sufficient to ensure Compact compliance during all years. Our experience leads us to believe that groundwater depletions will have to be continually evaluated in order to have sustained and long-term Compact compliance.

Reclamation is also concerned with how the best management practices (BMPs) criteria, as identified in this IMP, will be applied to surface water users without interfering with their water rights. Reclamation agrees that conservation tools and goals are valuable for water resource planning, but concerned with how these BMPs rules might be implemented in relation to our surface water users. Reclamation plans to continue to operate the Federal projects for their authorized purposes and expects the water rights associated with the authorized Federal multipurpose projects, located within the Basin, be recognized and protected by the State of Nebraska and the NRDs.

## SPECIFIC COMMENTS

### Goals provided under I. on page 3:

1. Sustainability– Reclamation strongly supports this goal as we believe sustainability is critical for Nebraska consistently complying with the Compact on both a short-term and long-term basis. This goal is currently not being met and will not be met until ground water depletions are reduced to a level that allows stream flows to begin to recover. Records (DNR data) indicate depletions from ground water have increased since 2004 and ground water levels (USGS data) are continuing to decline. This trend must be reversed.
2. Best Use; Best Practices – “require the most beneficial impact on the human population, sustainable water management and incentives for voluntary actions in accord with the best management practices criteria of the LRNRD as set forth in its Rules.” Is it the intent of LRNRD to impose their Best Use; Best Practices on surface water uses? If so, the LRNRD needs to clearly cite its authority, if any, to

impose these best management practices on surface water users. These rules should be clear and not restrict or interfere with surface water rights.

Definitions provided on page 5-6

“allowable groundwater depletions”. This definition needs to be clarified to be consistent with section 4.2 Forecast Procedures. This definition is also not consistent with DNR’s definition and section 4.3 Determination of Available Stream Flow.

III. Reservations. Page 7 – LRNRD contends in the IMP that the State of Nebraska must compensate the LRNRD for groundwater taken for RRC compliance obligations and that the State of Nebraska must compensate groundwater users whose use of their land, wells, or use of groundwater are curtailed or taken to allow the State to achieve compliance with the RRC. To ensure equity, surface water users should be fairly compensated as well for any surface water taken for RRC compliance.

IV. 4.3, page 10 - The maximum allowable consumption is provided in a table for the base year and the next 5 years. Based on the values listed it appears that this should be “maximum allowable application” rather than “maximum allowable consumption.”

IV. 9, page 11 – The word “ground” should be inserted in front of “water” on the first line as this depletion is in reference to the allowable ground water depletions. This also applies to the end of line six where the word “water” appears.

Under this same paragraph the IMP states that the URNRD and MRNRD should reduce water consumption to levels that supplement historic crops exclusive of corn, alfalfa, soybean, and other high-water crops. We do not see the need for this requirement. We support each of the NRDs in reducing ground water consumption to levels that allow for sustainable surface and ground water supplies and meeting RRC compliance but we do not believe that individual users should be restricted to specific crops. Surface water users associated with Reclamation projects have some of the most senior water rights and a long established history of water use. Many of our water users rely on long established farm economies dependant on some of these higher water use crops.

## CONCLUSION

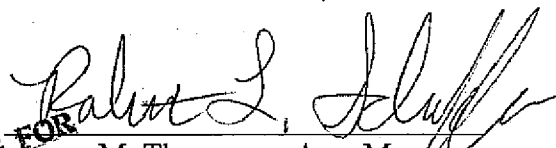
Reduced surface water supplies have caused the Federal project water deliveries, throughout the Basin, to decline during the past 40 years. Activities in the LRNRD directly impact the water supply for several canals associated with the Federal projects in the Basin. A decline of return flows from these canals has reduced supplies to downstream Federal projects as well. According to NE Stat. 46-715, the Integrated Management Plan (IMP) should include clear goals and objectives with the purpose of sustaining the balance between water uses and water supplies for both the short term and the long term. Reclamation is very concerned with this balance in the Basin as it relates

to surface water supplies for existing surface water uses. The water supply in the basin should be consistent and equitable for all water users.

Reclamation expects to continue to operate the Federal projects for their authorized purposes and expects the water rights associated with the authorized Federal multipurpose projects that were in the Basin be protected by State of Nebraska and the NRDs. Reclamation views our Federal water rights as property rights that must be provided equal protection. Sustained surface water supplies are critical for our future project viability and allowing Reclamation to perform its contractual obligations of delivering water to irrigation districts in "all" years.

Reclamation supports LRNRD's efforts in developing an IMP based on concepts and goals of providing sustainable surface and ground water supplies and maintaining long term compliance with the Compact. Reclamation is further encouraged by the LRNRD's willingness to significantly reduce ground water pumping which will ultimately lower the ground water depletions within the LRNRD and allow for the recovery of stream flows for the long term. While Reclamation is still unclear that the proposed reductions will be sufficient to ensure Nebraska will be able to comply with the Compact during dry or water-short years they are a positive step in developing a long-term approach.

In conclusion, Reclamation is encouraged by the effort of the LRNRD to consult with us in the development of the proposed IMP and is willing to continue to work collaboratively with all the NRDs, Irrigation Districts, and State as they seek compliance with the Compact. To ensure compliance in the long term, Reclamation believes there must be a healthy surface water component in the Basin. Adequately reducing ground water depletions will allow stream flows to recover, provide equity among water users, and assist Nebraska in achieving long term Compact compliance.

  
ACTING FOR Aaron M. Thompson, Area Manager