

April 22, 2008

Via Email and U.S. Mail

Brian Dunnigan, P.E.
Acting Director
Nebraska Department of Natural Resources
301 Centennial Mall South
Lincoln, Nebraska 68509

Re: Remedy for Nebraska's violation of the Decree in *Kansas v. Nebraska & Colorado*, No. 126, Original, U.S. Supreme Court

Dear Commissioner Dunnigan:

It was a pleasure to see you again at the Republican River Compact Administration meeting on Friday, April 11. This letter is a follow-up to our discussions at that meeting.

My letter to Ann Bleed of December 19, 2007, transmitted Kansas' proposed remedies for Nebraska's violations of the first test of compliance under the Court's decree on the Republican River, for Water-Short Year 2006 as defined in Section V.B.2 of the Final Settlement Stipulation (FSS). My December 19, 2007 letter defined Kansas' position on the payment required as part of the remedy as either Kansas' damages or Nebraska's gains, whichever is greater.

Attached to this letter is Kansas' economic report (Attachment 1) with supporting documentation, which further quantifies the amount of the payment that is referred to in Kansas' proposed remedy. The Kansas economic report is based on the assumption that Nebraska was able to acquire all of the reasonably available surface water in the Republican River Basin in 2005 and 2006 and deliver it to Guide Rock in order to minimize the reduction in groundwater pumping that would be required. This was intended to determine the lowest cost approach Nebraska could have taken to achieve compliance if only 2005 and 2006 are considered. Attachment 2 is our analysis of available surface water and relevant FSS accounting. Attachment 3 documents runs of the RRCA Groundwater Model to quantify the impact of the curtailment of groundwater pumping necessary for Nebraska to achieve compliance in Water-Short Year 2006. The electronic backup of this work is attached to the email transmittal of this letter, except the model runs, which have been uploaded to the RRCA web site.

Brian Dunnigan, Acting Director
April 22, 2008
Page 2

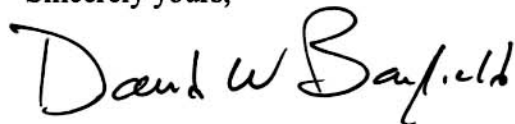
In the opinion of our economists, the benefits realized by Nebraska by not complying with the terms of the Compact and the FSS for Water-Short Year 2006 was \$ 62,926,203.

The Kansas analysis determines the minimum amount that could have been expended by Nebraska to comply with the 2006 Water-Short Year test utilizing the acquisition of available surface water combined with reduction in groundwater irrigated acres sufficient to provide the remaining reduction in consumptive use. The analysis is conservative in that it assumes no transit losses in surface water deliveries and ignores a number of possible physical, legal, and institutional limitations to delivery of surface water. The additional acres of groundwater pumping needed to be shut down for 2005 and 2006 is the groundwater acreage specified by Nebraska in the model stream cells for these two years, which averaged 131,095 acres.

The economic report only addresses the benefits enjoyed by Nebraska as a result of Nebraska's non-compliance; it does not quantify the costs and attorney fees incurred by Kansas as a result of the violations, nor does it acknowledge the need to create a disincentive to Nebraska not to continue its non-compliance. Therefore, Kansas believes that an additional 15% should be added in recognition of these foregoing considerations, bringing the total Kansas demand for payment to \$ 72,365,133.

We expect there will be additional remedies required for other violations to be quantified later this year for the Water-Short Year 2007 and the first 5-year compliance period ending in 2007.

Sincerely yours,



David W. Barfield, P.E.
Chief Engineer
Kansas RRCA Commissioner

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