

ON COMPACT COMPLIANCE

The commentary from Nebraska's Omaha and Lincoln based newspapers regarding the escalating feud between Kansas and Nebraska over Republican River flows and compact compliance continues to sway public opinion against Nebraska Republican River Basin irrigators and natural resource districts, while encouraging Kansas officials to posture and threaten.

Considering the tone of Kansas' officials and their appetite for publicity, it defies explanation why our guys are so passive. Kansas' bureaucrats have succeeded in selling the false belief that Nebraska groundwater pumping is the primary cause of reduced streamflow into Kansas. They apparently succeeded not only in convincing the Kansas populace and media of this myth, but more disturbingly, in convincing Nebraska officials and media of the same. It is way past time for our state leaders to stand up for our NRDs and irrigators because by remaining silent, or "working behind the scenes," we are losing big time in the court of public opinion.

Nebraska Republican River Basin (RRB) irrigators and NRDs are under assault. They are being hung out to dry and blamed for compact non-compliance. It seems many believe their plight is self-inflicted because they should have known that their actions or inaction would allow Kansas to prevail in court. But the truth is that RRB irrigators and NRDs relied on what Nebraska state officials and water law experts were saying about the Kansas threatened lawsuit. For example,

- June 20, 1995 - Then Director of Water Resources Mike Jess - *"Kansas doesn't have a very good case..."*
- June 20, 1995 - University of Nebraska water law specialist David Aiken - *"If they do sue us I don't think the sky is going to fall. I don't think Kansas is in any shape to get a lot of water out of Nebraska."*
- December 24, 1997 - Then Governor Ben Nelson - *"Nebraska has an iron-clad case" to win a potential lawsuit with Kansas.*
- December 1, 1998 - Then Governor-elect Mike Johanns - *"I want Kansas to understand that we are simply not rolling over. We believe we can win it."*

Incredibly, the Republican River compact was never amended or updated to deal with the realities of the second half of the Twentieth Century. Groundwater irrigation, Harlan County Reservoir, and federally mandated conservation programs all came about after 1943 but were never addressed. In spite of all this, things went fairly well under the compact for half a century until 1995 when

the Nebraska legislature passed LB 108, the so-called "conjunctive use" water bill.

Two years earlier, in Fairbury, our Water Resources director publicly declared to Kansas officials that the policy in Nebraska was to pump the groundwater until it was gone. This false and inflammatory declaration, combined with LB 108, sealed our fate with Kansas. It was our state government and state officials - not RRB irrigators or NRDs - that got us into this mess. Nevertheless, the blame for the problem and the burden for somehow resolving it has been heaped onto the backs of RRB irrigators and NRDs. The state has all but abdicated its responsibility in the matter.

LB 701 passed last legislative created a new significant tax burden for RRB irrigators. NRDs can impose up to a \$10 per irrigated acre "occupation fee" on their irrigators for the purposes of paying off bonds issued to generate funds for compact compliance measures. However, no such measures, no matter how costly, will satisfy Kansas. What Kansas wants is for groundwater pumping in Nebraska to be severely cut back to a level that would destroy productivity. This demand is excessive and must be summarily rejected by Nebraska officials because at stake is the very viability of RRB communities and schools. It is an undeniable fact that the impact of conservation measures (terraces, farm ponds, eco-fallow) and invasive vegetation on river flows dwarfs the small impact groundwater pumping has on flows.

This negative ongoing obsession on groundwater pumping is unwarranted and so potentially devastating to Nebraska economies and livelihoods. The salvation of south central and southwest Nebraska is in the hands of the Upper, Middle and Lower Republican NRDs. These NRDs must band together as one and hold the line against the unreasonable demands of Kansas politicians who apparently have our Nebraska officials cowering. NRDs are charged with protecting the economic well-being and tax base of their districts. They must not be intimidated by threats from Kansas or our own DNE. Terms of the settlement agreement must be amended through the dispute resolution process provided for in the agreement. It is up to our governor to demonstrate leadership in this effort before it is too late. Choking off irrigation in a vain gesture to appease Kansas politicians is unacceptable.