

## **KANSAS' DEMAND FOR MONEY DAMAGES UNFOUNDED**

We attended the March 11 and 12, 2008 meeting of the Republican River Compact Administration (RRCA) in Kansas City. The civility of the debate between Nebraska and Kansas officials was a surprise considering all the bickering played out in the press leading up to the meeting. Rather than the expected food fight, the two-day proceedings were businesslike and rancor-free. Kansas indicated they would ease up somewhat on their "fast track" timetable to re-file their grievance with the U.S. Supreme Court. However, the mood of the meeting did not alter the fact that Kansas continues to demand that Nebraska shut down all wells within 2 1/2 miles of the Republican River and its tributaries, and that Nebraska pay Kansas 72 million dollars for its overuse of water during the years 2003 - 2006. Nebraska is challenging the validity of Kansas' analysis and methodology used in determining over usage and associated dollar amount of the proposed damages. Attorney General Jon Bruning says that Kansas' damage claim "has no basis in reality" and that he believes integrated water management plans developed by the three Republican River natural resources districts will bring Nebraska into compliance. Even former U.S. Department of Interior Secretary Bruce Babbitt says that Nebraska has made "enormous progress" since Kansas sued back in 1998.

It is our view that Kansas has failed to prove up any legitimate money damages. The method they are employing involves a theory known as "unjust enrichment". Kansas argues that even though they are not being harmed by current Nebraska water usage in the basin, it does not matter. They say Nebraska is enjoying economic gain that we are not entitled to, and therefore Nebraska's gain should be handed over to Kansas in the form of dollars. This is absurd, and thank heavens our attorney general is on top of it. Kansas, by using this unjust enrichment ploy, is publicly admitting that Kansas is not being harmed by Nebraska water use. It is instructive to note that a U.S. Supreme Court special master rejected how Kansas calculated damages in a case where Kansas sued Colorado over use of Arkansas River water.

Article I of the Republican River Compact clearly states that a major purpose of the Compact is to "recognize that the most efficient utilization of the water within the basin is for beneficial consumptive use." Kansas seeks to ignore this mandate with its bogus claim for damages that would result in a tremendous

diminishment of beneficial consumptive use of water that Kansas does not need or will ever be used to benefit Kansas irrigators.

The RRCA meets again on May 15 and 16 in Lincoln. At this meeting, sparks could fly, and Kansas could very well decide they want to "lower the boom" on Nebraska.

Our officials need to be fully prepared and willing to face up to this challenge. It seems Kansas enjoys a fight. They are aggressive and assertive. Nebraska officials must stiffen their backbones and stand prepared to do battle.

What is at stake? The economic stability of every Nebraska Republican River Basin community. If Kansas prevails, the basin will lose over 1/2 million acres of productive irrigated farmland. Here is how Mike Lucas, the Superintendent of Schools for Franklin, Nebraska, sums up the situation as relates to just the Lower Republican NRD area:

*"Our land has 328,000 groundwater-irrigated acres. Of that, 140,000 of those acres would be negatively affected by this proposal as they lie in the "quick response area." These acres, which lie approximately two miles on either side of the river or a tributary, are on the richest ground and therefore have the highest valuation. With less water, these acres lose their irrigated valuation status.*

*School systems, city and county governments, rural health care, and other public entities are being set up to struggle even more as we all have a vested interest in what is going on within the Lower Republican District.*

*It has been calculated that if the water allocation got so low on those previously mentioned 140,000 acres and they were then reduced to dryland status, the overall negative impact on valuations would be \$182,000,000 per year. This doesn't include the personal property, such as pivots, diesel motors, etc.*

*Land that de-values obviously has a negative impact on a community's tax base and therefore their school systems, county and city governments, and other public entities all begin to weaken. As this happens, an extremely dangerous 'domino effect' comes into play where schools and towns that already battle declining enrollment may have their descent expedited due to more hardships for their area farmers.*

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