

Water Short Year – Not!!

This year should not be declared a water-short year for purposes of compact accounting. Water-short years are determined by the amount of water in Harlan County Reservoir on June 30 of each year. A water-short year is triggered when the irrigation supply in Harlan County falls below 119,000 acre-feet.

As of June 8, the irrigation supply in Harlan County exceeded 100 percent capacity, and the water in storage was 356,768 acre-feet – resulting in the flood pool being 8.5 percent full. Releases from the lake are now being made for flood-control purposes.

Compact compliance in non-water-short years is based on a

five-year average of supply and use numbers, rather than the two-year averages used in water-short years. Nebraska must also take additional steps to be in compliance in water-short years. Flood-control releases from the lake increase the virgin water supply allocated among the states under the compact. An increased supply means a greater allocation for Nebraska, increasing the chances Nebraska will use less water than its allocated supply.

Given that this year will not be water-short, and releases are being made from Harlan County, Nebraska is expected to meet the compact requirements in 2008.

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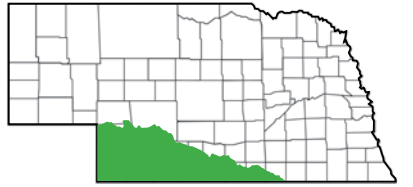
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Photo courtesy of Dick Neel

The Republican River near Red Cloud in late May. Picture shows a bare sand bar that last year would have been covered with phragmites, an invasive plant species. The area was sprayed last year as part of the vegetative management activities funded through LB 701.

Judge Rules LB 701 Unconstitutional

Lancaster County Judge Paul Merritt ruled parts of LB 701 unconstitutional in May. The legislation, passed in 2007 by the Nebraska Legislature, provided the Republican Basin Natural Resources Districts (NRDs) authorities to levy property taxes to repay bonds issued to fund water management activities. Merritt's ruling came in litigation filed by Friends of the River, who argued the property tax violated the Nebraska Constitution.

Merritt ruled LB 701 violated a constitutional prohibition against passing special legislation. Language in LB 701 specifying which NRDs could use the property tax authority created a closed class, according to the opinion, because it was not probable other NRDs could fall under the definition and have the same authorities. However, Merritt found LB 701 did not violate the Nebraska Constitution on two other issues raised by the plaintiffs. He ruled it did not violate the prohibition against levying a property tax for a state

purpose, or represent an unconstitutional commutation of taxes. The decision has been appealed to the Nebraska Supreme Court.

The ruling was the latest step in the continued legal wrangling which will take several months to resolve. The decision will impair the Republican NRDs' ability to purchase water rights this year and next if needed. It will also limit the timeliness with which NRDs can implement water augmentation projects or vegetation control measures. Left unclear by the ruling is whether the NRDs must return the property taxes already paid, and to whom. Also left unclear by the decision is the status of the occupation tax on irrigated acres because the occupation tax is not mentioned in the decision. Presumably the NRDs could continue levying the occupation tax if needed. Attorneys for Friends of the River, though, have indicated the possibility of challenging the occupation tax has been discussed.

Irrigators Receive Payment

The uncertainty created by the litigation over LB 701 meant hundreds of irrigators who had leased their right to use surface water to the NRDs last year were unpaid.

To provide payment to the irrigators, the legislature passed LB 1094, introduced by Sen. Tom Carlson of Holdrege and prioritized by Sen. Mark Christensen of Imperial. The legislature passed the bill March 31, and it was signed by the governor on April 1.

LB 1094 provided \$9 million in state financial assistance to the NRDs so they could in turn pay the irrigators. Checks were mailed to the irrigators in late April.

The legislation requires the NRDs to repay the state after the litigation is resolved.

Nebraska Farm Bureau worked closely with Sens. Carlson and Christensen and other water interests to secure passage of the bill.

Questions or comments?

Contact NFBF
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Compact Administration Initiates Dispute Resolution Process

Adoption of a resolution by the Republican River Compact Administration (RRCA) to submit issues to the compact dispute resolution process highlighted a meeting of the administration May 16 in Lincoln. The meeting was scheduled specifically by Nebraska, Kansas and Colorado to further discuss differences in regard to implementation of the settlement and compliance with the compact. The administration meeting came after meetings between technical and legal experts seeking to resolve or narrow the differences.

The dispute resolution process is non-binding arbitration spelled out in the settlement document. The process is required before a state can take an issue to the U.S. Supreme Court. The states will select an arbitrator, the states and arbitrator will agree on a schedule for resolution of the disputes, and the arbitrator will issue a decision. The arbitrator's decision must include a determination of the merits of the dispute and a proposed remedy. After the arbitrator has made a decision, the states have 30 days to notify the other states whether or not they accept the decision.

Each state has submitted issues for resolution through the process. Kansas is seek-



Photo courtesy of Tim Horn

Another view of the Republican River south of Red Cloud in late May, sprayed last year to control phragmites.

ing damages from Nebraska for overuse in 2005 and 2006, assurances of future compliance measures by Nebraska, and compliance by Colorado in certain sub-basins. Colorado wants approval for its

pipeline project. Nebraska wants changes in accounting and modeling procedures, including proper credit for imported water from the groundwater mound and proper accounting of evaporation water in Harlan

Republican Basin Surface Water Deliveries

(acre-inches)

	Frenchman Valley	Frenchman Cambridge	H+RW	Nebraska Bostwick	Kansas Bostwick
2001	4.0	7.6	2.7	10.1	11.1
2002	3.7	3.1	0	11.6	12.4
2003	4.1	0/7.6 ¹	0	6.2	8.2
2004	3.1	0/7.8	0	0/2.9 ¹	0/6.4 ¹
2005	.6	0/6.8	0	0/3.0	0/5.1
2006	0	0/5.8	0	0 ²	3/6.0
2007	0	0 ²	0	0 ²	5.2/7.1
2008	1.0 ³	6.5/8.0	1.0 ³	11.0	12.0/12.0

1 – Figures represent deliveries to multiple canals within a district.

2 – District either leased water available or chose not to take deliveries.

3 – District chose not to take delivery in 2008. Figures represent estimates of water available for delivery if it did take delivery.

NRDs Adopt Revised Rules and Integrated Management Plans

Each of the three Republican Basin NRDs (Upper, Middle and Lower) recently adopted revised rules governing groundwater use. The rules continue the moratorium on new wells and make adjustments to the pumping allocations. All three NRDs extended the allocation period to five years, and reduced the annual allocated amount. Annual allocated pumping amounts for the 2005-07 and the 2008-12 allocation periods are shown in the table below along with actual pumping for 2005-07.

The NRDs have also agreed to revised integrated management plans (IMPs) with the Department of Natural Resources (DNR) concerning the management of groundwater and surface water. The IMPs contain a “compliance standard” to measure progress in meeting the basin water

management goals. The standard is based on 1998-2002 average pumping, and each NRD's average contribution to streamflow depletions from groundwater pumping over the same period. The DNR, through the use of a groundwater model, has determined the Upper Republican NRD is responsible for 44 percent of the groundwater depletions to stream flows, 30 percent are attributable to the Middle Republican NRD, and 26 percent to the Lower Republican NRD.

The Upper and Middle Republican NRDs have agreed to reduce existing groundwater pumping by 20 percent from the 1998-2002 baseline. They have also agreed to keep groundwater depletions within their proportionate share of the state's total allowable depletions – 44 percent for the Upper, and 30 percent for the Middle. The Lower

Republican NRD did not agree to reduce total groundwater pumping; however, it did agree to keep its groundwater depletions within 26 percent of the total allowable depletions. DNR will annually calculate the total groundwater depletions allowed in order to keep Nebraska in compliance with the compact.

The IMPs require the NRDs to make additional reductions in groundwater use in water-short years as necessary to reduce total water use to maintain compact compliance. Each NRD will make any reductions required after taking into account reductions in use achieved through basin-wide incentives, streamflow augmentation or other programs. The reductions can be achieved through a combination of regulatory and supplemental programs.

Republican Basin NRD Allocations and Actual Pumping

	2005-07 Allocation	Actual Pumping ¹ (acre-inches)			2008-12 Allocation
		2005	2006	2007	
Lower	12/11 ²	7.4	7.6	6.14	9
Middle	13	8.78	10.4		12
Upper	13.5	11.4	12.8	10.5	13

1. Average pumping across the district.

2. Lower Republican NRD set a 12-inch allocation for wells located west of Highway 183 and an 11-inch allocation for wells located east of Highway 183.

DID YOU KNOW?

From 1998-2007, gross evaporation from Harlan County Lake averaged 37,982 acre-feet a year, or on average, 56% of each year's inflows into the lake.

Source: Bureau of Reclamation