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Before the Committee on Resources
Subcommittee on Water and Power

Hearing regarding HR4750
The Lower Republican River Basin Study Act

Introduction

Mr. Chairman, Ranking Member and members of the Subcommittee, I am David Cookson, Special Counsel to the Nebraska Attorney General. I appreciate the opportunity to appear before you today to express our support for H.R. 4750, Lower Republican River Basin Study Act. The proposed legislation resulted from the collaboration and agreement of the States of Kansas, Nebraska, Colorado and the Bureau of Reclamation, Army Corps of Engineers and the U.S. Department of Justice in negotiating a resolution to the interstate litigation in the U.S. Supreme Court, *Kansas v. Nebraska & Colorado*, No. 126 Original.

The Lower Republican system operated by the Bureau of Reclamation was at the center of that dispute and was a primary focus in the resolution of the litigation. To understand the role and importance of the Lower Republican River Basin Study Act a brief description of the circumstances that led to its development.

Background

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact with the approval of Congress. The Compact provided for equitable apportionment of the Republican River stream flows for beneficial consumptive use. The Compact allocates waters from the Basin, above Hardy, Nebraska among the three States. The entire water supply originating below Hardy is allocated to Kansas. As a result of the States agreeing to a Compact, Reclamation and the Corps began construction of reservoirs and irrigation works in the Basin under the authority of the Pick-Sloan plan adopted by Congress in 1944. Chief among these projects was Harlan County Dam and the associated Bostwick Irrigation Districts in Nebraska and Kansas.

For more than forty years, the three States administered the Compact in harmony and little disagreement. In May 1998, the relationship of the States changed when Kansas filed a Motion for Leave to file a Bill of Complaint with the U.S. Supreme Court alleging that Nebraska and Colorado were violating the Compact. The Supreme Court referred the matter to a Special Master in November, 1999.

Following several hearings, rulings of the Special Master, and a significant portion of discovery, the States began discussing the possibility of settlement negotiations. Beginning in October 2001, the States commenced several negotiation sessions. With progress being made, the Special Master, at the request of the States, agreed to postpone the progression of the case until December 15, 2002, in order to allow the States to engage in settlement negotiations. The U.S. Department of Justice, Reclamation, and the U.S. Army Corp of Engineers (Corps) also participated.

These negotiations culminated in a settlement package that was subsequently approved and entered into by the Governor and Attorney General of each State. On April 15, 2003, the Special Master formally recommended the approval of the Final Settlement Stipulation to the Court. On May 19, 2003, the Supreme Court approved the Final Settlement Stipulation. *Kansas v. Nebraska & Colorado*, 538 U.S. 720 (2003).

Section IV. E. of the Final Settlement Stipulation provides:

“The States agree to pursue in good faith, and in collaboration with the United States, system improvements in the Basin, including measures to improve the ability to utilize the water supply below Hardy, Nebraska on the main stem.”

Project Conditions

The feasibility study area lies in the lower portion of the Basin from Harlan County Dam in south-central Nebraska to Clay Center, Kansas just above the upper reaches of Milford Lake in north-central Kansas. Included in this area is the Bostwick Division of the Pick-Sloan Missouri River Program (P-SMBP), a Reclamation project. There are two irrigation districts that operate and maintain the irrigation system: the Bostwick Irrigation District in Nebraska and the Kansas Bostwick Irrigation District No. 2. These two districts began delivering water in the early 1950's. Current service is available to 22,935 acres in Nebraska and 42,500 acres in Kansas. Storage water is provided to the Bostwick Division from the Corps of Engineer's Harlan County Lake and Reclamation's Lovewell Reservoir. The water supply for Harlan County Lake comes from the Republican River and Lovewell's water supply comes from diversions from the Republican River at the Superior-Courtland Diversion Dam with some inflow from White Rock Creek. The existing project facilities for the Bostwick Division in Nebraska and Kansas are around 50 years old with typical ongoing maintenance and operational problems associated with aging facilities.

Due to changing hydrologic conditions in the entire Basin, these two districts frequently experience water supply shortages. The area below and above Harlan County Dam has also seen significant development of groundwater uses. As part of the settlement agreement, the States adopted a prohibition on the construction of new groundwater wells in the Basin above the Superior-Courtland Diversion. Nebraska has also adopted severe restrictions on groundwater use in the entire Republican River Basin at levels below the commonly accepted irrigation requirement. Additionally, the new contracts between the Bostwick Irrigation Districts and Reclamation (signed in 2000) mandated distribution system and on-farm delivery system efficiency improvements.

Need for Study

Reclamation and the Corps have been involved in the Basin for over 60 years. Federal water supply contracts with the Bostwick Irrigation Districts were renewed in 2000. The Bostwick Division in Nebraska and Kansas use most of the water storage space in Harlan County Lake and Lovewell Reservoir. Both districts have experienced significant water delivery shortages and anticipate that shortages will continue.

Presently some water supplies in the Lower Basin are not being fully utilized, and with some improvements in the existing systems and possibly some additional storage, the system could be managed to alleviate some of the water shortage problems. There are opportunities to improve the efficient use and overall management of the Basin's water resources. This can be done by increasing the water supplies available for Bostwick Division lands, providing additional flexibility for the States to comply with the provisions of the Final Settlement Stipulation, the terms of the Compact, or by supplying water for supplementing flows to meet downstream needs, particularly during times of shortage.

If adequate water is available there may also be opportunities in the basin to provide Kansas with supplemental water flows to meet the downstream needs, including supply to offset depletions of water right holders junior to minimum desirable streamflows adopted by the Kansas Legislature in 1984. Use of a storage facility at Beaver Creek, Jamestown, or other locations could provide additional fish and wildlife benefits, supplement flows to meet the minimum desirable streamflows, and improve the use of the water supply below Hardy.

To this end, Reclamation and the States have identified 9 alternatives as the focus of this feasibility study.

Cooperation of States

In addition to the provision in the Final Settlement Stipulation, Kansas and Nebraska have provided Reclamation with letters of intent stating a willingness to pursue the feasibility study and to share in the cost and an understanding of the estimated cost sharing.

Conclusion

Mr. Chairman, having resolved a contentious interstate water dispute at the speed of light in comparison to most similar lawsuits, we have embarked on a new path in dealing with interstate water issues – cooperation. Kansas, Nebraska and

the Federal Government have identified the possibility of using our scarce water resource more efficiently and support this legislation to help further our efforts. I would be pleased to answer any questions.