

Approved: 2-9-98
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Vice-Chairperson Joann Freeborn at 3:30 p.m. on January 21, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. Steve Lloyd - excused
Rep. Don Myers - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Hank Avila, Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Carla Stovall, Attorney General, Judicial Center, 2nd Floor,
Topeka, KS 66612-1597
David Pope, Chief Engineer-Director, Water Resources Div., KS
Dept. of Agriculture, Topeka, KS 66612-1283

Others attending: See attached list

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. She announced that tomorrow's meeting room has been changed to 313-S, the Old Supreme Court room. Also there has been some discussion as to who keeps track of requests for further information which committee members asks of presenters during hearings or informational sessions. Raney Gilliland, Legislative Research Department, has agreed to do that. So if you have not heard from someone that you requested information from you can visit with him and he will assist in tracking those answers. She introduced two legislators that are visiting the committee today, Rep. Ted Powers and Rep. Clay Aurand.

The Chairperson welcomed Attorney General Carla Stovall to the committee. She along with David Pope, Chief Engineer-Director, Water Resources Division, Department of Agriculture, briefed the committee on the Kansas-Nebraska Republican River Compact. She introduced the Assistant to Attorney General, Don Pitts. He had slides for the committee to view as the Attorney General was speaking. (See attachment 1). The Attorney General and Mr. Pope reviewed the history of the compact with Nebraska dating back to 1942 and reviewed maps showing the Republican River Basin and the counties and cities it affects. They explained the compact dispute between Kansas and Nebraska. They feel Nebraska has not made any attempts at resolving the issue of water over use and have shown a consistent pattern of that. The Kansas Legislature will decide whether the state will file a lawsuit over water use against Nebraska. Questions by the committee followed.

Rep. Peggy Palmer made a motion that the Committee recess for an executive meeting to consult with the Attorney General and Assistant Attorney General, as permitted by subsection (b) (3) of K.S.A. 75-4319, regarding the Republican River Compact dispute. To aid the committee in its discussion in the executive meeting, the committee requests the Chief Engineer of the Division of Water Resources of the Department of Agriculture and staff of the Division and attending legislators who are not committee members, to be present. The open meeting will resume in this room in 20 minutes.

The executive meeting began at 4:15 p.m.

The open meeting resumed at 4:35 p.m.

General Stovall and David Pope answered questions by the committee. Chairperson Freeborn thanked the Attorney General and staff, and David Pope for their presentation.

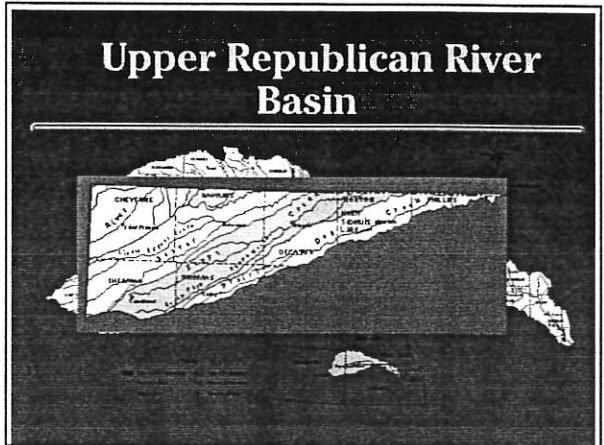
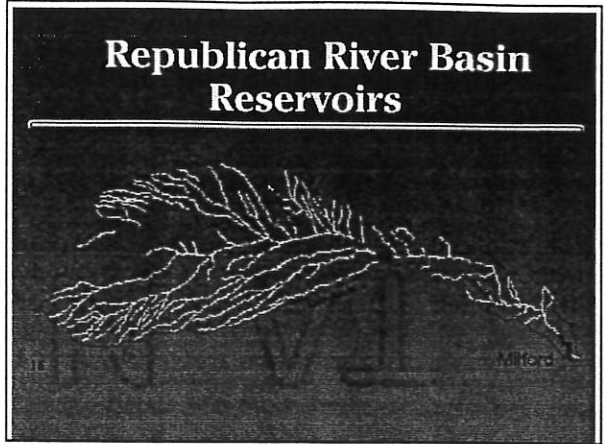
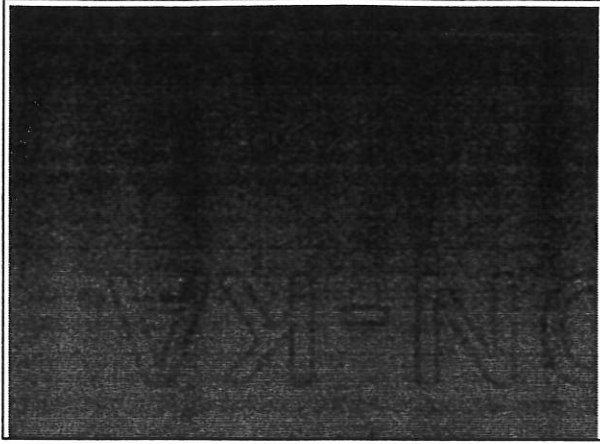
The meeting adjourned at 4:50 p.m.

The next meeting is scheduled for January 22, 1998.

HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: Jan. 21 - 98

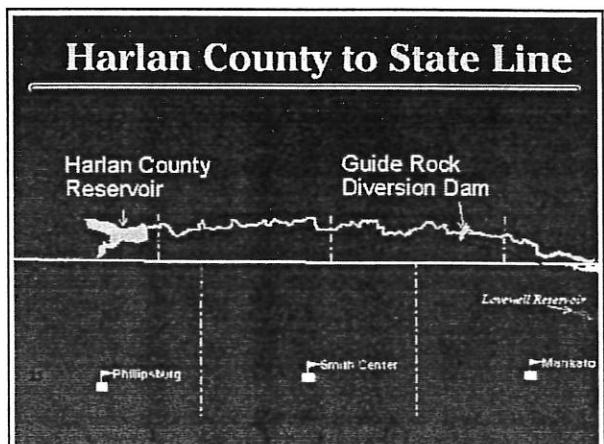
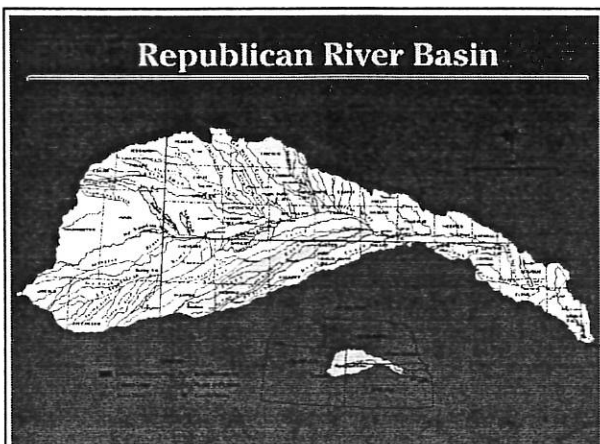
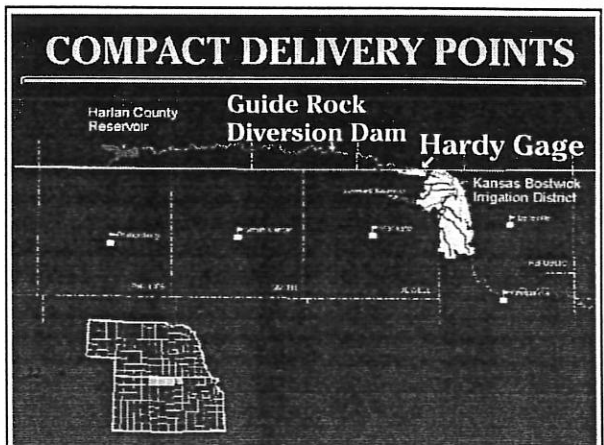
NAME	REPRESENTING
Charles Benjamin	KS Sierra Club / KS Natural Resource Council
Enka Ungeheuer	Steve Montgomery
Sarah Kessinger	Harris News Service
L. Ferguson	AP
John D. McCleere	
Eric Manning	Rep. Doug Johnston
Tom Stiles	KWO
Erik Sartorius	Pete McGill + Assoc.
James Fowler	AG
Nancy Lindberg	AG
Jamie Clover Adams	Governor's Office
Matt Friedrichs	Kansas City Business Journal
Bill Fuller	Kansas Farm Bureau
Mike Beam	Ks. LUSTK. Assn.



Republican River Compact

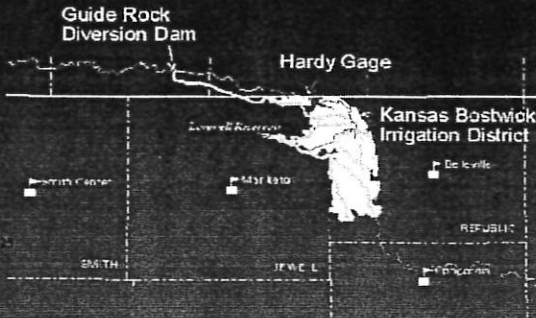
INVESTIGATION OF NEBRASKA'S VIOLATIONS

- ❖ Investigative Team
- ♦ Engineering
- ♦ Legal



*House Environment
1-21-98
Attachment 1*

Guide Rock to Concordia, KS

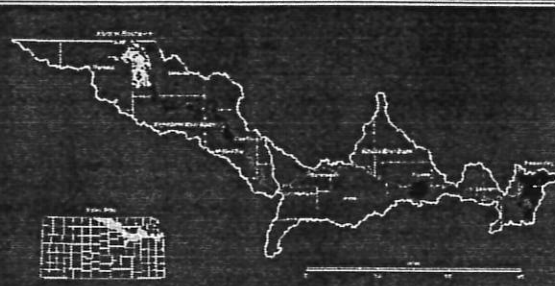


BASIC PROBLEM

Increased pumping from wells in Nebraska

- ❖ Will the Compact protect Kansas?

Downstream Kansas Interests

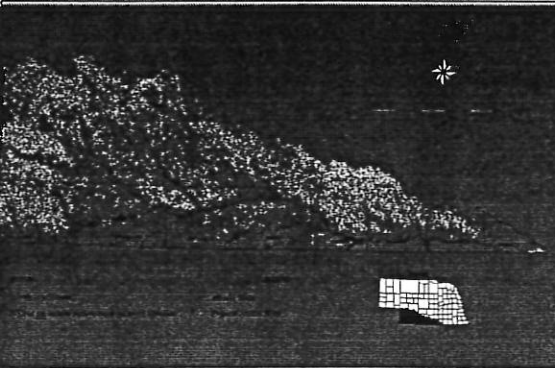


Republican River Compact

IMPORTANT PRINCIPLES

- ❖ The Compact allocates the flows of the Republican River between Colorado, Nebraska and Kansas.
 - ♦ Colorado - 11%
 - ♦ Nebraska - 49%
 - ♦ Kansas - 40%

Wells in Nebraska



Republican River Compact

IMPORTANT PRINCIPLES

- ❖ The Compact allocations to each State are based on surface water flows as they would have occurred without interference by man.
 - ♦ Kansas vs. Colorado - United States Supreme Court recognized the effect of groundwater pumping on apportioned stream flows.

Wells in the Republican River Basin



Republican River Compact

IMPORTANT PRINCIPLES

- ❖ As a result of Nebraska's overuse, Kansas has often not received the full amount that it could have put to beneficial use.
 - ♦ This is water to which Kansas is entitled under the Compact.
 - ♦ Additional shortages have occurred in dry years when the need for water is most critical.

History of the Compact Administration

FORMATION AND AUTHORITY

- ❖ In 1960 the Administration was formed.
- ❖ It adopted methods, used until recently, to estimate:
 - ♦ the basin's water supply and
 - ♦ **consumptive uses of the supply**

Current Water Law Administration

NEBRASKA

- ❖ There is **NO LIMIT** on the drilling of new wells or on the amount pumped in the Middle or Lower Republican River basins.

History of the Compact Administration

CALCULATION OF CONSUMPTIVE USE

- ❖ There is a consistent pattern of overuse by the State of Nebraska.
- ❖ Nebraska has failed to limit most of its uses despite consistently reported overuse.



David L. Pope
Chief Engineer
Department of Agriculture

Current Water Law Administration

KANSAS

- ❖ Since 1985 new well development and pumping in Northwest Kansas Republican River basin has been strictly controlled.

Republican River Compact Administration

ATTEMPTS AT RESOLUTION

- ❖ 1985 - Kansas began to express concern
- ❖ 1989 Kansas Proposal
 - ♦ **Vetoed by Nebraska**
- ❖ 1993 - Joint Nebraska/Kansas Legislative Public Meetings

Current Water Law Administration

NEBRASKA

- ❖ Groundwater pumping is unregulated at the State level.
- ❖ Local control has been ineffective.

Republican River Compact Administration

ATTEMPTS AT RESOLUTION

- ❖ 1995 Kansas Proposal
 - ♦ **Vetoed by Nebraska**
- ❖ 1995 - Nebraska's only proposal:
 - ♦ **Renegotiate the Compact**

Republican River Compact Administration

ATTEMPTS AT RESOLUTION

- ❖ Nebraska requests Kansas to enter into mediated negotiations.
- ❖ Nebraska would not address Kansas' concerns.
- ❖ Kansas discontinued negotiations.

Republican River Compact

NEBRASKA LOCAL MANAGER'S OPTION

- ❖ Provides Kansas with only a fraction of its entitlement
- ❖ Does not provide Kansas its water when and where needed

Republican River Compact Administration

ATTEMPTS AT RESOLUTION

- ❖ 1997 Annual Meeting
 - ♦ Kansas raised concerns
 - ♦ Nebraska offered no concrete proposals for discussion

Republican River Compact

ATTEMPTS AT RESOLUTION

- ❖ Nebraska has taken no action which adequately addresses:
 - ♦ Kansas' concerns
 - or
 - ♦ It's obligations under the Compact.

Republican River Compact

NEBRASKA LOCAL MANAGER'S OPTION

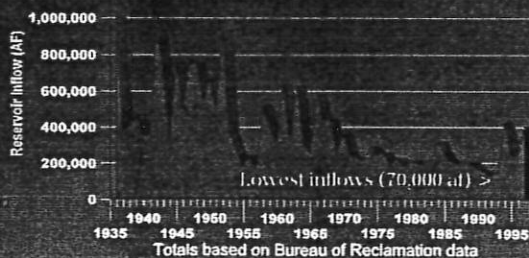
- ❖ Forwarded without endorsement by the Nebraska Compact Commissioner
- ❖ Would allow Nebraska's violations to continue
- ❖ Allows Nebraska to continue drilling new wells which would increase the violations

Republican River Compact

NEBRASKA LOCAL MANAGER'S OPTION

- ❖ In essence, it is an attempt to renegotiate the terms of the Compact to the advantage of Nebraska.
- ❖ The interests of Kansas will be better served through enforcement of the Compact.

Harlan County Reservoir Inflows



Republican River Basin

NEBRASKA'S REPORTED OVERUSE

- ❖ Nebraska reports overuse of about 25,000 acre-feet per year without Ogallala impacts. (1988 -1992 Average)

Republican River Basin

KANSAS SHORTAGES

- ❖ Kansas experiences shortages during times of drought.
 - ♦ **The tendency is increasing.**
 - ♦ **It is during periods of drought that the Compact's protection is critical**

Republican River Basin

VALUE OF WATER TO KANSAS

- ❖ Kansas has limited its uses in response to diminished supply.
 - ♦ **No new permits**
- ❖ If rightful allocation is received Kansas will have the water needed for:
 - ♦ **Agricultural, municipal, business, recreational and other uses.**

Republican River Basin

NEBRASKA'S CONTINUING DEVELOPMENT

- ❖ The impacts of development on Kansas' water supply.
 - ♦ **In 1992, the Kansas Bostwick planted only 23,500 of its 40,000 acres.**

Kansas vs. Nebraska

PARTIES

- ❖ Nebraska - Defendant
- ❖ Colorado - Necessary party
- ❖ United States - Necessary party
 - ♦ **Federal reservoir and irrigation projects**

Republican River Basin

NEBRASKA'S CONTINUING DEVELOPMENT

- ❖ Other impacts on Kansas' water supply.
 - ♦ **1992 - Minimum desirable stream flows were administered**
 - ♦ **100 irrigation wells were shut down**
- ❖ Milford reservoir levels were reduced

United States Supreme Court

COST OF A LAWSUIT

- ❖ Average of \$1 million each year
- ❖ Case may last 12 to 15 years

Republican River Basin

VALUE OF WATER TO KANSAS

- ❖ Approximate yearly shortages are enough for:
 - ♦ **City of Topeka's water needs for one year.**
 - ♦ **Year's Water supply for Jeffrey Energy Center**
 - ♦ **Irrigation for about 20,000 acres in the Lower Republican River basin**

Conclusions & Recommendations

CONSEQUENCES OF NOT BRINGING SUIT

- ❖ Continued Nebraska Well Development
- ❖ Future shortages will be worse.
- ❖ Kansas agriculture, industry and commerce will remain limited for lack of adequate water resources.

Conclusions & Recommendations

BENEFITS OF FILING SUIT NOW

- ❖ The number of Nebraska wells has gone up almost 10% since 1989
- ❖ That was the first year we proposed that Nebraska put a moratorium on problem basins.
- ❖ Laches

Conclusions & Recommendations

BENEFITS OF FILING SUIT NOW

- ❖ It would cause Nebraska to take seriously our rights under the Compact.
- ❖ It may provide an incentive and a vehicle for an enforceable settlement.

Joint Resolution

BENEFITS

- ❖ Demonstrate broad support for suit in Kansas
- ❖ Legislative concurrence with Attorney General's determination to file complaint
- ❖ Expressed intent by current legislature that case be funded to completion