

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on January 16, 2003 in Room 231-N of the Capitol.

All members were present except: Representative Ted Powers - excused
Representative Dan Thimesch - excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mary Torrence, Revisor of Statute's Office
Mary Ann Graham, Secretary

Conferees appearing before the committee: David Pope, Chief Engineer, Division of Water Resources,
KS Dept. Agriculture, 109 SW 9th 2nd Floor, Topeka, KS
66612-1280

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order. She welcomed committee members and guests to the first Environment meeting of the 2003 session and reviewed the committee agenda for next week, Kent Lamb, Chairman, Kansas Water Authority and Clark Duffy, Director, Kansas Water Office, will be giving an overview on water issues on January 21. On January 23 an overview of the history of the Kansas Agricultural Remediation Board and annual report will be presented by the Remediation Board. Maurice Korphage, Director, Conservation Division, KCC, will present an overview and update on Well Plugging and Remediation Activities. Also, she called attention to the committee rules that had been distributed to each member.

The Chairperson announced that the committee has nine new members this session and asked if each member would introduce themselves and give a brief background.

Chairperson Freeborn asked if anyone had a bill request at this time.

Chad Luce, Public Information Officer, Kansas Department Wildlife and Parks, requested a bill that would increase the percentage of non-resident permits available, amend the rules for the use of transferable non-resident permits, amend the categories and statutory cap for the price of deer game tags, and increase the value of deer that are taken illegally for commercial purposes.

Rep. Vaughn Flora made a motion the bill requested by Chad Luce be introduced. Rep. Gary Hayzlett seconded the motion. Motion carried.

Raney Gilliland, Legislative Research Department, was recognized by the Chairperson. He briefed the committee on the Interstate Compacts and Agreements between the states of Colorado, Kansas, and Nebraska, and **HCR 5030** requiring the Attorney General to bring suit against the State of Nebraska to enforce the provisions of the Republican River Compact. (See attachment 1)

The Chairperson welcomed David Pope, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, to the committee. He introduced Greg Foley, Acting Secretary of Agriculture and Dave Barfield, Civil Engineer, Division of Water Resources, Department of Agriculture, in attendance today. Mr. Pope briefed the committee on the Republican River Compact Litigation Settlement between Kansas, Nebraska and Colorado regarding the Republican River. (See attachment 2) After more than a year of intense negotiations, a comprehensive settlement has been reached effective December 15, 2002, which was approved by the governors and attorneys general of the three states. Last week, the states and Department of Justice presented the proposed settlement to the special master appointed to hear the case by the U.S. Supreme Court. During the hearing, the special master said he would recommend the settlement to the Supreme Court. However, it will not be final until it is approved by the Supreme Court, which is expected later this year. Also, much work remains to implement the settlement. The settlement fulfills Kansas' objectives in finding

CONTINUATION SHEET

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an acceptable resolution of the dispute without years of litigation. Those objectives include: (1) Compact compliance by each of the states, including recognizing the impact of groundwater wells on surface flows of the basin; (2) A moratorium on new well drilling; (3) Protecting and enhancing the water supply for downstream users, including the Kansas Bostwick Irrigation District, while providing flexibility for users in the upper portion of the basin in northwest Kansas. The settlement removes the uncertainty that is always present in litigation and it allows compliance with the compact sooner than if litigation continued. While additional resources are needed to implement the settlement and to ensure compliance by the other states, it will save millions of dollars compared to protracted litigation. Questions by the committee followed.

The Chairperson thanked Mr. Pope for his presentation and committee members and guests for their attention.

The meeting adjourned at 5:00 p.m. The next meeting is scheduled for Tuesday, January 21, 2003.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: January 16, 2003

NAME	REPRESENTING
David L Pope	KDA
Gregg A. Foley	KDA
David Barfield	KDA
Charles Benjamin	KS Sierra Club
Ben Hopper	KS Dadey Assoc.



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82a-518

Chapter 82a.--WATERS AND WATERCOURSES Article 5.--INTERSTATE COMPACTS AND AGREEMENTS

82a-518. Ratification by legislature; text and map. The legislature hereby ratifies the compact, designated as the "Republican river compact," between the states of Colorado, Kansas, and Nebraska, signed in the city of Lincoln, state of Nebraska, on the thirty-first of December, A.D. 1942, by M. C. Hinderlider, as commissioner for the state of Colorado, by George S. Knapp, as commissioner for the state of Kansas, and by Wardner G. Scott, as commissioner for the state of Nebraska, and also signed by Glenn L. Parker, as representative of the United States, which said compact is as follows:

REPUBLICAN RIVER COMPACT

The States of Colorado, Kansas, and Nebraska, parties signatory to this compact (hereinafter referred to as Colorado, Kansas, and Nebraska, respectively, or individually as a State, or collectively as the States), having resolved to conclude a compact with respect to the waters of the Republican River Basin, and being duly authorized therefor by the Act of the Congress of the United States of America, approved August 4, 1942, (Public No. 696, 77th Congress, Chapter 545, 2nd Session) and pursuant to Acts of their respective Legislatures have, through their respective Governors, appointed as their Commissioners:

M. C. Hinderlider, for Colorado George S. Knapp, for Kansas Wardner G. Scott, for Nebraska

who, after negotiations participated in by Glenn L. Parker, appointed by the President as the Representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the most efficient use of the waters of the Republican River Basin (hereinafter referred to as the "Basin") for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.

The physical and other conditions peculiar to the Basin constitute the basis for this compact, and none of the States hereby, nor the Congress of the United States by its consent, concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

Article II

The Basin is all the area in Colorado, Kansas, and Nebraska, which is naturally drained by the Republican River, and its tributaries, to its junction with the Smoky Hill River in Kansas. The main stem of the Republican River extends from the junction near Haigler, Nebraska, of its North Fork and the Arikaree River, to its junction with Smoky Hill River near Junction City, Kansas. Frenchman Creek (River) in Nebraska is a continuation of Frenchman Creek (River) in Colorado. Red Willow Creek in Colorado is not identical with the stream having the same name in Nebraska. A map of the Basin approved by the Commissioners is attached and made a part hereof.

The term "Acre-foot," as herein used, is the quantity of water required to cover an acre to the depth of one foot and is equivalent to forty-three thousand, five hundred sixty (43,560) cubic feet.

The term "Virgin Water Supply," as herein used, is defined to be the water supply within the Basin undepleted by the activities of man.

The term "Beneficial Consumptive Use" is herein defined to be that use by which the water supply of the Basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area.

*House Environment
1-16-03
Attachment 1*

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Beneficial consumptive use is the basis and principle upon which the allocations of water hereinafter made are predicated.

Article III

The specific allocations in acre-feet hereinafter made to each State are derived from the computed average annual virgin water supply originating in the following designated drainage basins, or parts thereof, in the amounts shown:

North Fork of the Republican River drainage basin in Colorado, 44,700 acre-feet;

Arikaree River drainage basin, 19,610 acre-feet;

Buffalo Creek drainage basin, 7,890 acre-feet;

Rock Creek drainage basin, 11,000 acre-feet;

South Fork of the Republican River drainage basin, 57,200 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 98,500 acre-feet;

Blackwood Creek drainage basin, 6,800 acre-feet;

Driftwood Creek drainage basin, 7,300 acre-feet;

Red Willow Creek drainage basin in Nebraska, 21,900 acre-feet;

Medicine Creek drainage basin, 50,800 acre-feet;

Beaver Creek drainage basin, 16,500 acre-feet;

Sappa Creek drainage basin, 21,400 acre-feet;

Prairie Dog Creek drainage basin, 27,600 acre-feet;

The North Fork of the Republican River in Nebraska and the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line and the small tributaries thereof, 87,700 acre-feet.

Should the future computed virgin water supply of any source vary more than the (10) percent from the virgin water supply as hereinabove set forth, the allocations hereinafter made from such source shall be increased or decreased in the relative proportions that the future computed virgin water supply of such source bears to the computed virgin water supply used herein.

Article IV

There is hereby allocated for beneficial consumptive use in Colorado, annually, a total of fifty-four thousand, one hundred (54,100) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin, 10,000 acre-feet;

Arikaree River drainage basin, 15,400 acre-feet;

South Fork of the Republican River drainage basin, 25,400 acre-feet;

Beaver Creek drainage basin, 3,300 acre-feet; and

In addition, for beneficial consumptive use in Colorado, annually, the entire water supply of the Frenchman Creek (River) drainage basin in Colorado and of the Red Willow Creek drainage basin in Colorado.

There is hereby allocated for beneficial consumptive use in Kansas, annually, a total of one hundred ninety thousand, three hundred (190,300) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

Arikaree River drainage basin, 1,000 acre-feet;

South Fork of the Republican River drainage basin, 23,000 acre-feet;

Driftwood Creek drainage basin, 500 acre-feet;

Beaver Creek drainage basin, 6,400 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 12,600 acre-feet;

From the main stem of the Republican River upstream from the lowest crossing of the river at the Nebraska-Kansas state line and from water supplies of upstream basins otherwise unallocated herein, 138,000 acre-feet; provided, that Kansas shall have the right to divert all or any portion thereof at or near Guide Rock, Nebraska; and

In addition there is hereby allocated for beneficial consumptive use in Kansas, annually, the entire water supply originating in the Basin downstream from the lowest crossing of the river at the Nebraska-Kansas state line.

There is hereby allocated for beneficial consumptive use in Nebraska, annually, a total of two hundred thirty-four thousand, five hundred (234,500) acre-feet of water. This total is to be derived from the sources and in the amounts hereinafter specified and is subject to such quantities being physically available from those sources:

North Fork of the Republican River drainage basin in Colorado, 11,000 acre-feet;

Frenchman Creek (River) drainage basin in Nebraska, 52,800 acre-feet;

Rock Creek drainage basin, 4,400 acre-feet;

Arikaree River drainage basin, 3,300 acre-feet;

Buffalo Creek drainage basin, 2,600 acre-feet;

South Fork of the Republican River drainage basin, 800 acre-feet;

Driftwood Creek drainage basin, 1,200 acre-feet;

Red Willow Creek drainage basin in Nebraska, 4,200 acre-feet;

Medicine Creek drainage basin, 4,600 acre-feet;

Beaver Creek drainage basin, 6,700 acre-feet;

Sappa Creek drainage basin, 8,800 acre-feet;

Prairie Dog Creek drainage basin, 2,100 acre-feet;

From the North Fork of the Republican River in Nebraska, the main stem of the Republican River between the junction of the North Fork and Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line, from the small tributaries thereof, and from water supplies of up-stream basins otherwise unallocated herein, 132,000 acre-feet. The use of the waters hereinabove allocated shall be subject to the laws of the State, for use in which the allocations are made.

Article V

The judgment and all provisions thereof in the case of Adelbert A. Weiland, as State Engineer of Colorado, et al., v. The Pioneer Irrigation Company, decided June 5, 1922, and reported in 259 U.S. 498, affecting the Pioneer Irrigation ditch or canal, are hereby recognized as binding upon the States; and Colorado, through its duly authorized officials, shall have the perpetual and exclusive rights to control and regulate diversions of water at all times by said canal in conformity with said judgment.

The water heretofore adjudicated to said Pioneer Canal by the District Court of Colorado, in the amount of fifty (50) cubic feet per second of time is included in and is a part of the total amounts of water hereinbefore allocated for beneficial consumptive use in Colorado and Nebraska.

Article VI

The right of any person, entity, or lower State to construct, or participate in the future construction and use of any storage reservoir or diversion works in an upper State for the purpose of regulating water herein allocated for beneficial consumptive use in such lower State, shall never be denied by an upper State; provided, that such right is subject to the rights of the upper State.

Article VII

Any person, entity, or lower State shall have the right to acquire necessary property rights in an upper State by purchase, or through the exercise of the power of eminent domain, for the construction, operation and maintenance of storage reservoirs, and of appurtenant works, canals and conduits, required for the enjoyment of the privileges granted by Article VI; provided, however, that the grantees of such rights shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes assessed against the lands and improvements during the ten years preceding the use of such lands, in reimbursement for the loss of taxes to said political subdivisions of the State.

Article VIII

Should any facility be constructed in an upper State under the provisions of Article VI, such construction and the operation of such facility shall be subject to the laws of such upper State.

Any repairs to or replacements of such facility shall also be made in accordance with the laws of such upper State.

Article IX

It shall be the duty of the three States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

The United States Geological Survey, or whatever federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, shall collaborate with the officials of the States charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of water facts necessary for the proper administration of this compact.

Article X

Nothing in this compact shall be deemed:

- (a) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over, and to the waters of the Basin; nor to impair or affect the capacity of the United States, or those acting by or under its authority, to acquire rights in and to the use of waters of the Basin;
- (b) To subject any property of the United States, its agencies or instrumentalities, to taxation by any State, or subdivision thereof, nor to create an obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;
- (c) To subject any property of the United States, its agencies or instrumentalities, to the laws of any State to any extent other than the extent these laws would apply without regard to this compact.

Article XI

This compact shall become operative when ratified by the Legislature of each of the States, and when consented to by the Congress of the United States by legislation providing, among other things that:

- (a) Any beneficial consumptive uses by the United States, or those acting by or under its authority, within a state, of the waters allocated by this compact, shall be made within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent of use within that State.
- (b) The United States, or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over, and to the waters of the Basin shall recognize, to the extent consistent with the best utilization of the waters for multiple purposes, that beneficial consumptive use of the waters within the Basin is of paramount importance to the development of the Basin; and no exercise of such power or right thereby that would interfere with the full beneficial consumptive use of the waters within the Basin shall be made except upon a determination, giving due consideration to the objectives of this compact and after consultation with all interested federal agencies and the state officials charged with the administration of this compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes.
- (c) The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes of the waters allocated by this compact which may be impaired by the exercise of federal jurisdiction in, over, and to such waters; provided, that such use is being exercised beneficially, is valid under the laws of the appropriate State and in conformity with this compact at the time of the impairment thereof, and was validly initiated under state law prior to the initiation or authorization of the

federal program or project which causes such impairment.

In Witness Whereof, the Commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the States.

Done in the city of Lincoln, in the State of Nebraska, on the 31st day of December, in the year of our Lord, one thousand nine hundred forty-two.

M. C. Hinderlider Commissioner for Colorado George S. Knapp Commissioner for Kansas Wardner G. Scott Commissioner for Nebraska

I have participated in the negotiations leading to this proposed compact and propose to report to the Congress of the United States favorably thereon.

Glenn L. Parker Representative of the United States

History: L. 1943, ch. 335, § 1; June 28.

Kansas State Capitol - 300 SW 10th St. - Topeka, Kansas 66612

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WHEREAS, According to the Kansas Department of Transportation traffic counts, this 20-mile stretch of US-169 highway is at or above capacity and at this distance is the most heavily traveled two-lane highway in the state of Kansas; and

WHEREAS, Because of the enormous economic and population growth in the area, the traffic count on US-169 highway will continue to increase, providing a greater threat to safety of the traveling public; and

WHEREAS, US-169 highway is a part of the strong economic corridor providing the shortest route between the Kansas City area to Oklahoma City and on to the Southwest area; and

WHEREAS, The danger and risk of traveling on US-169 highway has reached proportions that exceed the reasonable risks associated with driving on our public highways; and

WHEREAS, The tragic loss of life has become too great on US-169 highway and corrective measures are needed immediately to improve the safety on "Heartbreak Highway": Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Legislature of the State of Kansas strongly urges the United States Congress to support the designating of US-169 highway as a demonstration project; and

Be it further resolved: That the Secretary of State be directed to send copies of this resolution to each member of the Kansas Congressional Delegation.

Adopted by the House February 23, 1998.

Adopted by the Senate February 12, 1998.

CHAPTER 205

HOUSE CONCURRENT RESOLUTION No. 5030

A CONCURRENT RESOLUTION requiring the Attorney General to bring suit against the State of Nebraska to enforce the provisions of the Republican River Compact.

WHEREAS, The Republican River is an important supply of water to citizens of the Republican River Basin in Kansas; providing a source of water for irrigation, municipal, industrial, recreational and other uses; and

WHEREAS, The Republican River is also a major tributary of the Kansas River and, therefore, a source of water supply for a substantial portion of the population of this state; and

WHEREAS, Shortages of water in the Republican River Basin in Kansas have a significant adverse economic impact on property values and incomes within the Basin, as well as on the economic welfare of the State as a whole, and reduced stream flow in the Republican River has a potentially negative impact on surface water quality; and

WHEREAS, The Republican River Compact was entered into by the states of Kansas, Nebraska and Colorado to provide for an equitable di-

vision of the waters of the Republican River Basin among the compacting states; and

WHEREAS, The loss of water to which Kansas is entitled under the Compact, as a result of the State of Nebraska's overuse, has hindered existing uses of water in Kansas and has discouraged economic development; and

WHEREAS, The State of Nebraska, for a number of years, has admitted consumptive use in excess of its allocations under the Compact; and

WHEREAS, The State of Kansas since at least 1985 has consistently expressed concern regarding the State of Nebraska's escalating overuse of its allocation under the Republican River Compact and the corresponding longer and more frequent shortages to the State of Kansas; and

WHEREAS, The State of Nebraska has increasingly refused to recognize that the use of groundwater in the Republican River Basin is subject to the limitations of the Republican River Compact and has failed to take sufficient regulatory action to fulfill the State of Nebraska's obligations under the Compact, including failure to implement an appropriate moratorium on the development of new wells and adequate regulation of existing groundwater pumping in the Republican River Basin; and

WHEREAS, The preliminary estimates of depletions caused by the State of Nebraska's failure to comply with the Republican River Compact appear to be two to four times the amount of violations found by the Special Master appointed by the United States Supreme Court in *Kansas v. Colorado*, No. 105 Original; and

WHEREAS, The State of Kansas has sought the cooperation of the State of Nebraska in resolving the compact dispute through nonjudicial means, including mediation, but to no avail; and

WHEREAS, The State of Nebraska has refused to take any action to comply with the Compact; and

WHEREAS, The State of Nebraska has consistently vetoed any action proposed to the Republican River Compact Administration by the State of Kansas to address Kansas' concerns; and

WHEREAS, The State of Kansas as a last resort must now turn to litigation to enforce its rights under the Republican River Compact: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That, in accordance with K.S.A. 75-702, the Attorney General of the State of Kansas is hereby required to file and prosecute an action against the State of Nebraska to enforce the provisions of the Republican River Compact, K.S.A. 82a-518.

Adopted by the House February 9, 1998.

Adopted by the Senate February 27, 1998.

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KANSAS DEPARTMENT OF AGRICULTURE

House Environment Committee

January 16, 2003

Republican River Compact Litigation Settlement

David L. Pope, Chief Engineer

Madam Chairperson and members of the committee, I am David Pope, chief engineer of the Kansas Department of Agriculture's Division of Water Resources. I am here to brief you on the recent litigation settlement between Kansas, Nebraska and Colorado regarding the Republican River.

After more than a year of intense negotiations, we reached a comprehensive settlement effective December 15, 2002, which was approved by the governors and attorneys general of the three states. Last week, the states and the Department of Justice presented the proposed settlement to the special master appointed to hear the case by the U.S. Supreme Court. During the hearing, the special master said he would recommend the settlement to the Supreme Court. However, it will not be final until it is approved by the Supreme Court, which we expect later this year. Also, much work remains to implement the settlement, which I will discuss later.

The settlement fulfills Kansas' objectives in finding an acceptable resolution of the dispute without years of litigation. Those objectives include:

1. Compact compliance by each of the states, including recognizing the impact of groundwater wells on surface flows of the basin;
2. A moratorium on new well drilling;
3. Protecting and enhancing the water supply for downstream users, including the Kansas Bostwick Irrigation District, while providing flexibility for users in the upper portion of the basin in northwest Kansas.

The settlement removes the uncertainty that is always present in litigation and it allows us to achieve compliance with the compact sooner than if we had continued litigation. While we will need additional resources to implement the settlement and to ensure compliance by the other states, it will save millions of dollars compared to protracted litigation.

Background

In 1943, Kansas, Nebraska and Colorado entered into the Republican River Compact to equitably divide the waters of the Republican River basin. As shown on the attached map, the basin includes portions of eastern Colorado, northwest Kansas and southwest Nebraska. The main stem Republican River flows into Kansas north of Concordia and then into Milford Reservoir. Releases from Milford Reservoir join the Smoky Hill to form the Kansas River. Consequently, Kansas is both an upstream and a downstream state in this compact.

The compact allocates the basin's water supply above the Kansas-Nebraska state line, providing approximately 10 percent to Colorado, 40 percent to Kansas and 50 percent to Nebraska for beneficial consumptive use. All water that originates downstream of Nebraska is allocated to Kansas.

Historic water resources development in the basin includes a system of seven Bureau of Reclamation and two Corps of Engineers' reservoirs and six irrigation districts, along with an extensive amount of groundwater use primarily for irrigation. Kansas projects include Keith Sebelius Reservoir in Prairie Dog Creek in northwest Kansas and Milford and Lovewell reservoirs in the lower Republican River basin. Kansas also receives irrigation benefits from Harlan County Reservoir in Nebraska.

The water from the Republican River basin is important to Kansas for:

1. Water users within Republican River tributaries of northwest Kansas;
2. Surface water and groundwater users on the Republican River main stem in north-central Kansas, including the Kansas Bostwick Irrigation District;
3. Milford Reservoir users. The Republican River is a major tributary to the Kansas River and contributes to this water supply for much of our state's population.

Kansas Raises Concerns

Late in the 1980s, Kansas began raising serious concerns with Nebraska and has proposed several solutions regarding:

1. Nebraska's failure to comply with the terms of the compact, primarily due to their lack of adequate regulation of groundwater pumping and overuse of their allocation;
2. The lack of enforcement mechanisms within the compact. After many attempts to resolve the dispute through the Republican River Compact administration and mediation, the state had no alternative but to seek relief through the U.S. Supreme Court.

Litigation

In May 1998, with the support of the Legislature through concurrent resolution, the Kansas Attorney General filed a motion for leave to file a bill of complaint with the U.S. Supreme Court alleging that Nebraska was violating the Republican River Compact. On January 19, 1999, the court granted Kansas leave to file its bill of complaint. Nebraska filed an answer and counterclaim in April 1999. Colorado also filed an answer and counterclaim. The court appointed a special master, Vincent L. McKusick, to hear the case.

Much of 1999 and 2000 was spent considering legal issues, especially whether the impact of groundwater use on stream flow is restricted by the compact. In an important ruling, the special master held that it did. During fall 2000 the special master issued a case-management order identifying a number of legal issues for resolution and setting forth an aggressive, detailed trial preparation schedule that would lead to a trial commencing March 1, 2003.

The remainder of 2000 and much of 2001 was dedicated to briefings and formal discovery. More than one million pages of documents and an extensive amount of electronic data were exchanged under discovery.

The initial rulings by the special master and court paved the way for meaningful settlement discussions. During fall 2001, the states began exploring the potential for resolving the case by settlement. During December 2001, the special master, at the request of the states, agreed to postpone the case's progression to allow the states to engage in settlement negotiations. The U.S. Department of Justice, U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers also participated in settlement negotiations.

Summary of Key Settlement Elements

1. If approved by the U.S. Supreme Court, the settlement will resolve the litigation initiated by Kansas in 1998. Each state agrees to waive all claims for damages prior to December 15, 2002.
2. A moratorium on new large-capacity wells is required in most of the basin upstream of Guide Rock, Nebraska. Kansas and Colorado must maintain their existing restrictions on new uses in the basin, which are quite restrictive.
3. The settlement requires all three states to limit their consumptive use of water, including the effect of groundwater use on stream flow, to their compact allocations as determined by the provisions of the settlement.
4. It contains detailed accounting formulas and reporting requirements for all water uses to determine compact compliance, including using a jointly developed computer model to determine the impact of all wells within the basin.

5. Each state has flexibility as to where it allows the use of water, as long as it is within its total allocation and it does not impair another state's ability to use its allocation.
6. The settlement allows multiyear averaging. However, during water-short years, the averaging period is reduced to protect downstream uses.
7. When the available water supply is limited from Harlan County Reservoir, a water-short year is deemed to exist and additional restrictions on use apply above Guide Rock, Nebraska, to protect downstream uses.
8. Nebraska is also required to protect storage releases from Harlan County Reservoir, and to curtail water rights junior to 1948 below the reservoir, during water-short years.
9. It includes procedures for mediation and arbitration to help resolve any disputes that arise. The detailed requirements related to data collection, exchange and monitoring should help avoid future disputes and improve enforcement.
10. It provides a framework where states can work together to improve operational efficiencies and the usable water supply in the lower Republican River basin.

Officials of all three states worked hard to obtain a settlement that is a fair and workable resolution of the dispute for all interests. I believe there is significant value in moving forward with the states through the compact administration to implement the settlement.

Implementation

The settlement will not end Kansas' obligations related to the Republican River Compact in terms of staff time and fiscal resources, although it will likely save millions of dollars in litigation costs. Implementing the provisions of the settlement will require:

- Completing the groundwater model this year, including arbitration if necessary, and developing in-house expertise to run the model on an ongoing basis to complete annual compact accounting with the other states.
- Monitor Kansas' water use to ensure future compliance in northwest Kansas.
- Monitor Nebraska's and Colorado's future compliance.
- Monitor Harlan County Reservoir irrigation supply and dry-year administration required by the settlement.
- Participate with Nebraska and the U.S. in a feasibility study of the alternatives identified in a value engineering study conducted by the U.S. Bureau of

Reclamation. Kansas will be expected to commit to 25 percent of the total cost, either through in-kind services, cash, or some combination. Kansas' required contributions are expected to be \$125,000 in FY 05, \$125,000 in FY 06 and \$62,500 in FY 07.

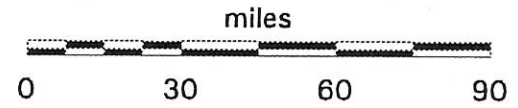
- Participate in a study of the impacts of nonfederal reservoirs and land terracing on the basin's virgin water supply. I expect Kansas' participation in this study to be provided through in-kind services.
- Being prepared to use arbitration or other means to resolve any future disputes under the dispute resolution provisions of the settlement.

Conclusion

I am convinced that the settlement is a reasonable solution that meets our original objectives while avoiding the uncertainty, time and expense of protracted litigation. A detailed summary of the settlement agreement is attached to my testimony. I would be glad to answer your questions regarding this matter. Thank you.

Attachments: Basin Map
Settlement Summary

Republican River Basin



Index Map



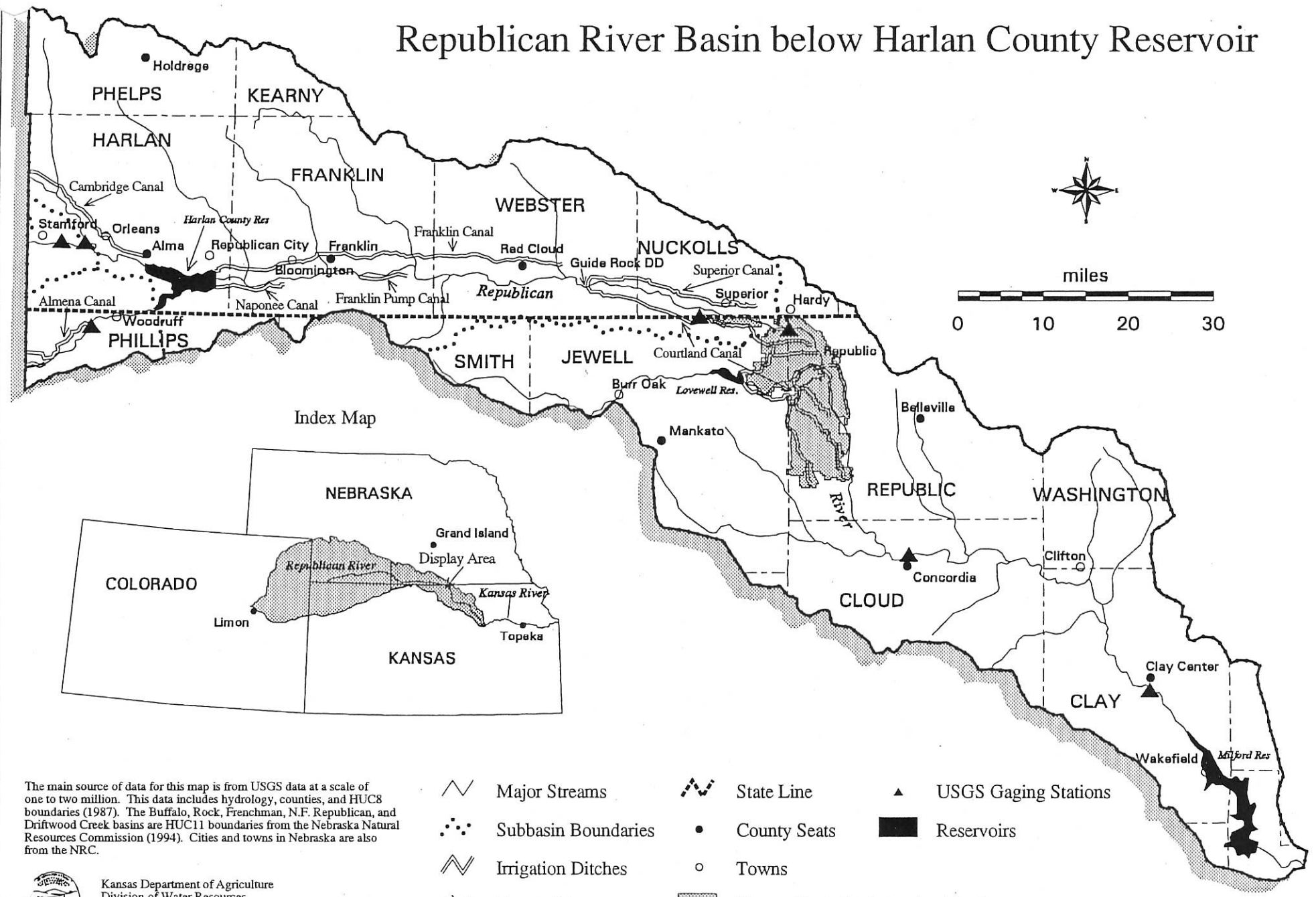
- Major Streams
- Basin Boundaries
- County Lines
- State Lines
- Reservoirs and Lakes
- County Seat

The main source of data for this map is from USGS data at a scale of one to two million. This data includes hydrology, counties, and HUC8 boundaries (1987). The Buffalo, Rock, Frenchman, N.F. Republican, and Driftwood Creek basins are HUC11 boundaries from the Nebraska Natural Resources Commission (1994). Cities and towns in Nebraska are also from the NRC.



Kansas Department of Agriculture
Division of Water Resources
SWRMP, August 1996

Republican River Basin below Harlan County Reservoir



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- Major Streams
- Subbasin Boundaries
- Irrigation Ditches
- County Lines
- State Line
- County Seats
- Towns
- USGS Gaging Stations
- Reservoirs
- Kansas Bostwick Irrigation District



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Summary of the Republican River Settlement Agreement - December 15, 2002

Following is a brief description of the major components of the final settlement stipulation agreed to by Kansas, Colorado and Nebraska.

Section I - General Provisions - Resolution of Pending Litigation

The settlement resolves the pending litigation and disputes between the states and provides for dismissal with prejudice of the original action. This means all claims arising prior to December 15, 2002, that could be made against another state, including any claims for damages, are waived.

Section II - Definitions

Section III - Existing Development

The states agreed that a moratorium would be placed on the construction of new wells upstream of Guide Rock, Nebraska. Kansas' and Colorado's existing rules, which create a de facto moratorium, were accepted as sufficient for this purpose. Nebraska was required to develop a moratorium that generally applies to the three Republican River Natural Resources Districts (NRDs).

Section IV - Compact Accounting

The settlement adopts clear, detailed accounting formulas to determine whether each state is limiting its consumptive uses of the basin's water supply to its allocation under the compact. Major aspects of the accounting procedures include methods to determine depletions from surface water and groundwater use; subbasin flexibility; averaging; and measurement and data collection.

Determining Depletions: The settlement requires states to use a comprehensive groundwater model, currently being developed by the three states, to determine the impact of all groundwater pumping on the basin's stream flows.

Subbasin Flexibility: The settlement provides each state with flexibility for the location of their use of water, as long as the state's total use is within its allocation and its use does not impair the ability of a downstream state to use its specific allocation. Based on historic use, this should give Kansas sufficient flexibility to continue existing uses in northwest Kansas, except under very rare conditions when some moderate regulation may be required.

Averaging: The settlement agreement provides that compact accounting and compliance will be done on a five-year rolling average, except, as is discussed below, in water-short years when a two- or three-year average will be used to protect Kansas' needs in the lower basin. Thus, these provisions provide all the states, including Kansas, with needed flexibility to use water to the extent it is consistent with compact allocations, balanced by the need to protect downstream uses in critical periods.

Measurement and Data Collection: RRCA accounting procedures describe the measurements to be made, data to be compiled, format of reports, and the deadline by which reports must be submitted to the RRCA engineering committee.

During negotiations, the states and the United States discussed the possibility of working together to improve the water supply to the lower river, including the Kansas Bostwick Irrigation District and main stem Republican River in Kansas. The Bureau of Reclamation, with some technical assistance from the states, evaluated on a limited basis 13 alternatives. The bureau is initiating an appraisal study of three alternatives the states believe are most feasible. It is possible that the states and the bureau may elect to pursue authorization and funding of one or more of these alternatives to better utilize and manage the waters of the lower Republican River basin.

Section V entitled Guide Rock discusses administration in a water-short year.

The compact provides that Kansas may take all or a portion of its allocation for the main stem at or near Guide Rock, Nebraska. The settlement provides for additional water administration in Nebraska above Guide Rock, particularly during water-short years. Nebraska has agreed to recognize a priority date of February 26, 1948, for the Kansas Bostwick Irrigation District and to protect any storage water released from Harlan County Lake from diversions by those without a contract for the water.

When the U.S. Bureau of Reclamation forecasts an irrigation water supply in Harlan County Lake of less than 130,000 acre feet (the water supply available to the Bostwick Irrigation District when Harlan County Reservoir is full), and water is needed for irrigation at Guide Rock, Nebraska will close permits between Harlan County Lake and Guide Rock that are junior to February 26, 1948.

When the irrigation supply is less than 119,000 acre feet (known as water-short year administration), Nebraska has agreed to further limit its computed beneficial consumptive use above Guide Rock to no more than the amount of its allocation derived above Guide Rock. This will be calculated using a two-year average rather than the five-year average generally used under the compact accounting

The settlement provides for an alternative to the two-year running average compliance schedule in water-short year administration if Nebraska elects to implement a pre-approved plan for reducing its uses above Guide Rock. In such cases, its compliance above Guide Rock will be based on a three-year running average.

Section VI - Soil and Water Conservation

To address federal government concerns regarding depletions due to conservation practices, the states have agreed to count evaporation from nonfederal reservoirs larger than 15 acre feet and, in cooperation with the United States, to undertake a study to assess the impacts of nonfederal reservoirs and land terracing on the basin water supply. The cost of the study is to be no more than \$1 million. The federal government will pay for 75 percent of the study and each state agrees to pay their share of the remaining 25 percent. The states' shares may be paid entirely by

in-kind contributions. Participation in the study does not commit any state to include soil and water conservation measures in the compact accounting.

Section VII - Dispute Resolution

The settlement provides clear mechanisms to resolve future disputes among the states. Any disputes related to the compact will be submitted first to the compact administration. If the state raising the issue believes it requires immediate attention, it must be addressed by the compact administration within 30 days. Any issue that cannot be resolved by the compact administration will be submitted to nonbinding arbitration, unless otherwise agreed to by the states. If arbitration does not resolve the dispute, the state may seek relief from the U.S. Supreme Court.

We believe this dispute resolution process, when combined with the extensive detail negotiated in the settlement and the cooperative atmosphere established in the settlement discussions, will minimize future disputes that must go before the court for resolution.

As the details of the settlement will be a decree of the U.S. Supreme Court, breaches of its expressed provisions will be more easily demonstrated than under the compact itself. Also, it will have serious consequences for the states and the officials who allow such breaches to occur.

The text of the settlement agreement and other background information can be found on the department's website at: www.accesskansas.org/kda.