

Approved: 2/17/05

Date

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairperson Carolyn McGinn at 8:30 A.M. on January 27, 2005 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Gina Poertner, Committee Secretary

Conferees appearing before the committee:

David Pope, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture

Others attending:

See attached list.

The meeting was called to order by Chairperson McGinn at 8:30 a.m. Sen. McGinn recognized David Pope of the Kansas Department of Agriculture, Division of Water Resources, who presented an update on the status of interstate water litigation regarding river compacts (Attachment 1).

Sen. McGinn asked if the area in the Republican River area is primarily flood or pivot irrigation. Mr. Pope explained that it is primarily pivot irrigation. He went on to discuss the area where the basin crosses the state line in the northwest part of the state is part of the High Plains Aquifer and the Ogallala system, that most of the irrigation is from groundwater and pivot. The Chair then followed this question by asking if water rights are still given out, even with the limitations placed on acre-feet. Mr. Pope said that in the northwest part of Kansas, the tributary systems were closed about 20 years ago. However, the upland area in the Ogallala was treated differently and allowed some rights in later years but is now considered defacto closed. Sen. McGinn then asked if Colorado originally agreed to the Court Master. It was explained by Mr. Pope that the Court accepted the lawsuit filed by Kansas, then the US Supreme Court appointed the Special Master, so neither state got to make this choice.

Sen. Taddiken asked if the funding was an enhancement. It was confirmed by Mr. Pope that the money is an enhancement and comes from the General Fund in the Water Management Surfaces in the Department's budget. Sen. Taddiken asked about the status of the water level in Harlan county, Nebraska Reservoir. Mr. Pope stated that the 4-year drought has taken its toll in Harlan county. Without a wet winter to provide spring runoff, the reservoir will be in bad shape.

It was asked by Sen. Teichman if anything was being done east of the Garden City area to help the farmers. Mr. Pope stated that they are trying to help. The Arkansas River is one of the most highly developed river systems in the country. It has extremely heavy use, which goes all the way back to the 1870s. The river was fully developed by 1900. The Basin Management Program helps the people in the Dodge City to Great Bend areas to address their issues for the long-term.

Sen. McGinn thanked Mr. Pope and asked if there were any bills to be introduced. Sen. Taddiken asked the Committee to consider introducing a bill that would authorize the Kansas Department of Wildlife and Parks to issue big game permits to the Commissioners. These permits could be transferred to a organizations that actively promote wildlife conservation. The Chair then asked for questions for Sen. Taddiken regarding this bill. Sen. Huelskamp asked if this was similar to what the Committee discussed in the past couple of years. It was confirmed by Sen. Taddiken that this is very similar. It was moved by Sen. Taddiken to introduce the bill introduction and seconded by Sen. Lee. There was no discussion and the introduction was approved by voice vote.

Seeing no other bill introductions, Chairperson McGinn adjourned the meeting at 9:30 a.m.

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster
January 27, 2005

| Name | Representing |
|-----------------|-----------------------|
| Leland E. Rolfs | KDA |
| David Pope | KDA |
| Wendy Williams | KAPA |
| Pat Wilman | GMD #4 |
| Janelle Nuessen | Hein Law Firm |
| Ron Seebor | Hein Law Firm |
| Chris Tymeson | KDWP |
| Leslie Kaufman | KS Coop Council |
| SARAH KATK | INTERN SEN. FRANCISCO |
| Steve Swaffar | KFB |
| Chris Wilson | GMD 3 |
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KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Report on Implementing Flex Accounts (K.S.A. 82a 736)
to
The Senate Committee on Natural Resources**

**by David Pope
Chief Engineer
Kansas Department of Agriculture's Division of Water Resources**

February 1, 2005

K.S.A. 82a 736, which became law May 9, 2001, requires the chief engineer of the Kansas Department of Agriculture's Division of Water Resources to implement a program that provides for issuing term permits to water right holders to allow them to establish flex accounts for groundwater use. There also is a provision that requires the chief engineer to submit a written report on the law's implementation to your standing committees by February 1 of each year.

Attached are a copy of the rules and regulations promulgated in 2002 to implement the program within the statutory criteria. The criteria allow eligible, participating water right holders to use, within a five-year period, an amount of groundwater that is no more than 90 percent of their actual base average use times five and as long as it does not impair other existing water rights.

The law requires that any groundwater right holder who wants to establish a flex account, and exercise its use through a term permit, must file the term permit application no later than October 10 of the year preceding the first year for which application is made.

In 2004, water right holders were reminded of the flex account provision through a news release to media outlets statewide. As of October 10, 2004, no applications for term permits had been filed with the chief engineer, nor have any applications been received for participation in the program beginning in 2006.

Currently, there are only five active flex accounts: Two were filed in 2002 and are for the period from 2003 through 2007. Three were filed in 2003 and are for the period from 2004 through 2008.

Due to the limited interest shown in this program, no additional staff were hired to process applications. All applications have been handled by existing staff in the water

appropriation program. The \$400 filing fee was paid for the five permit applications we received in 2002 and 2003.

We will again remind water users of this option by issuing a news release this summer. We also plan to work with groundwater management districts, the Kansas Water Office, farm organizations and others to let waters know about the flex account option. Information about flex accounts is also on our website at <http://www.accesskansas.org>
www.ksda.gov/Default.aspx?tabid=321.

FLEX ACCOUNT
October 11, 2002

K.A.R. 5-16-1. Definitions. As used in this article of regulations, in the Kansas water appropriation act, and by the chief engineer in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation. (a) "Base water right" means a vested or certified water right or rights for which the owner applies to the chief engineer to establish a flex account pursuant to K.S.A. 82a-736, and amendments thereto.

(b) "Good standing," only as used in K.S.A. 82a-736, and amendments thereto, in reference to base water rights, means a base water right that meets the following conditions:

(1) Has been lawfully exercised within the five-year time period specified in K.A.R. 5-16-5;

(2) has had all required water use reports filed and any civil fines assessed for failure to timely file a complete and accurate water use report paid; and

(3) has had no five-consecutive-year period of nonuse since December 31, 1990, except for enrollment in the water right conservation program according to K.A.R. 5-7-4 and enrollment in the federal conservation reserve program or other multiyear federal or state conservation program.

(c) "Significant water conservation measures" means actual physical changes in a water distribution system or management practices that improve water use efficiency, including the following:

(1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;

- (2) irrigation scheduling;
- (3) conversion to subsurface drip irrigation; and
- (4) removal of an end gun, resulting in a significant reduction in the number of irrigated acres. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

K.A.R. 5-16-2. Fee to establish flex account and apply for term permit. The filing fee for establishing a flex account and applying for a five-year term permit to exercise the flex account shall be \$400. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2001 Supp. 82a-708a(d), as amended by L. 2002, Ch. 181, § 21; effective Oct. 11, 2002.)

K.A.R. 5-16-3. Establishing a flex account. (a) A flex account shall be established by filing an application for a flex account and a term permit on a form prescribed by the chief engineer. The five-year period shall begin on January 1 of the next calendar year for which the application has been timely filed, unless expressly authorized by the chief engineer to begin the following January 1. The application shall also show the location of all wells located within one-half mile of the proposed point of diversion, and the names, addresses, and telephone numbers of the owners of those wells. Except as set forth in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a flex account. Each application shall be accompanied by the filing fee specified in K.A.R. 5-16-2.

(b) Before any application to establish a flex account and a term permit will be accepted for filing, the application shall be signed by at least one owner of the water right, or a duly authorized agent of an owner of the water right.

(c) Before the flex account can be established or the term permit approved, all of the water rights owners, or a duly authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a flex account and apply for a term permit may be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use for a single type of use.

(2) Multiple points of diversion are authorized by the chief engineer to divert water through a single water flowmeter before going to an identical place of use.

(f) The flex account shall not be established, and the term permit to exercise the flex account shall not be valid until both have been approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

K.A.R. 5-16-4. Conditions on the term permit. (a) The place of use authorized by a term permit shall be identical to the place or places of use authorized by the base water right or rights.

(b) The type of use authorized by a term permit shall be limited to one of the types of use authorized by the base water right or rights.

(c) The rate of diversion authorized by a term permit shall not exceed the maximum instantaneous rate of diversion authorized by the base water right or rights. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

K.A.R. 5-16-5. Maximum annual quantity of water authorized by term permit. (a) Except as set forth in subsections (b) through (e), the maximum quantity of water deposited in a flex account and authorized to be diverted in five consecutive calendar years under the authority of a term permit shall be determined in accordance with K.S.A. 82a-736, and amendments thereto, by means of these calculations:

(1) Adding the total actual legal annual water use of the base water right or rights for the period of 1996 through 2000;

(2) dividing that total quantity of water by five;

(3) multiplying that quantity by 0.9; and

(4) multiplying that quantity by five.

(b) If significant water conservation measures were implemented under the base water rights during any time during the period of 1996 through 2000, the average annual quantity of water actually used may be calculated using the five consecutive calendar years immediately preceding the implementation of significant water conservation measures, but these five calendar years shall not begin before calendar year 1991. The five-year allocation under the term permit shall be determined by means of these calculations:

(1) Adding the total actual legal annual water use of the base water right or rights for the five consecutive calendar years;

(2) dividing that total quantity of water by five;

(3) multiplying that quantity by 0.9; and

(4) multiplying that quantity by five.

(c) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year during the five-year period, then that year shall be counted as having no water use.

(d) No flex account shall be allowed if the flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(e) If water was authorized to be diverted for less than five consecutive calendar years, the five-year allocation shall be determined by means of these calculations:

(1) Adding the total annual quantity of water actually legally diverted during the five-year period;

(2) dividing the total quantity by the number of years, or parts thereof, that water was authorized to be diverted by the chief engineer;

(3) multiplying that quantity by 0.9; and

(4) multiplying that quantity by five.

Water rights that authorized use of water for less than two entire calendar years during the five-year period shall not be eligible for a flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

K.A.R. 5-16-6. Flex accounts and term permits. (a) The duration of the flex account and term permit shall be five consecutive calendar years.

(b) There shall be no extension of a flex account or a term permit beyond the period of five consecutive calendar years originally authorized.

(c) There shall be no carryover of unused quantities of water from one flex account or term permit to another flex account or term permit.

(d) Only one flex account shall be in force for a point of diversion or a water right at any time.

(e) A water flowmeter meeting the requirements of the chief engineer shall be installed on each point of diversion authorized by the term permit. If an existing water flowmeter had been required on or after September 22, 2000 or if there is no existing water flowmeter, the water flowmeter shall meet the requirements of the chief engineer in effect at the time the term permit is approved. If a water flowmeter was installed before September 22, 2000, the water flowmeter shall meet the requirements of K.A.R. 5-1-6(b).

(f) Only an entire water right, or a portion of a water right that has been formally divided, may be deposited in a flex account.

(g) All water diverted pursuant to a term permit and the base water rights associated with the term permit shall be counted against the quantity of water deposited in the flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

K.A.R. 5-16-7. Conditions under which a base water right may be exercised. Each term permit approved by the chief engineer according to this article shall include the condition that if the term permit can no longer be exercised because of an order issued by the chief engineer, including an intensive groundwater use control area order, a minimum desirable streamflow order, or an order to administer water rights to prevent impairment, then any base water right may be exercised to the extent that all of the following conditions are met:

(a) The base water right is in priority.

(b) The annual quantity of water authorized by the base water right has not been diverted during that calendar year.

(c) The five-year allocation authorized by the term permit has not been used.

(d) The use of water under the base water right does not impair water rights senior to the base water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective P- October 11, 2002.)



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Interstate Litigation

The Senate Natural Resources Committee

David L. Pope, Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

January 27, 2005

Madam Chairperson and members of the committee, I am here to update you on the status of litigation Kansas initiated to enforce the terms of its interstate river compacts. Significant progress has been made in both cases in recent years, but we still need to wrap up litigation with Colorado on the Arkansas River and work must be done to implement the Republican River settlement.

Republican River Compact Litigation

In 1943, Kansas, Nebraska and Colorado entered into the Republican River Compact to equitably divide the waters of the Republican River among our states. The compact allocated renewable water supplies in the basin for our states' beneficial consumptive use. See Attachment A for a map that shows the extent of the Republican River basin in Kansas, Colorado and Nebraska.

We had some concerns related to interpretations of the compact, especially related to extensive, unregulated groundwater use by Nebraska. When our attempts to resolve our concerns through the compact administration failed, the Kansas Attorney General filed suit on May 26, 1998, in the U.S. Supreme Court. The Kansas Legislature supported our action by passing House Concurrent Resolution 5030.

On December 16, 2002, after initial legal rulings, discovery proceedings and extensive negotiation, the case was settled by the states. A term of the settlement was that our states jointly develop a groundwater model against which we could measure each state's compliance with the compact. We agreed to a model on June 30, 2003.

The settlement was approved by the U.S. Supreme Court on May 19, 2003. In short, Kansas should get the water to which it is entitled because each state must limit its water use to the allocations in the compact. We now have clear data collection requirements, accounting

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methods and the jointly developed groundwater model we can use to assess compliance with the compact.

Nebraska agreed to a moratorium on drilling new, large-capacity wells in most of the Republican River basin, to protect water releases from Harlan County Reservoir where it is stored for a Kansas irrigation project and to curtail rights junior to 1948 in this critical reach of the river. See Attachment B for a more detailed description of the settlement.

The compact accounting for 2003 shows that Nebraska was about 25,000 acre-feet over its allocation, Colorado by about 12,000 acre-feet, and that Kansas was in compliance with its allocation. This is the first year of a five-year running average compliance period from 2003 through 2007.

Nebraska and Colorado are putting controls in place to reduce use so they can achieve compact compliance. Both states passed legislation in 2004 that will help their efforts.

Nebraska now requires that all large-capacity wells in the basin be permitted and metered. Also, after extensive debate, two of Nebraska's natural resource districts developed new rules with fairly restrictive pumping allocations. Nebraska and one other natural resource district are still discussing how to proceed, but some pumping restrictions will be necessary. Nebraska also is dedicating several million dollars to financial incentives to reduce the amount of irrigated land near the river by about 60,000 acres. That will help decrease their water consumption and their depletive effect on streamflow.

Colorado created a new water conservation district in the Republican River basin. It recently imposed a special tax of \$5 per acre on irrigated land and equivalent taxes for other water uses. They plan to spend about \$3.5 million a year in financial incentives for people to not irrigate to reduce consumptive use.

Although the Republican River settlement probably saved Kansas millions of dollars in litigation costs, it will not end Kansas' obligations related to administration of the Republican River Compact. Implementing the settlement will require:

- The Republican River Compact Administration (RRCA) must complete annual groundwater model updates and the compact accounting. This is done by technical staff from our three states and our consultants. The RRCA recently approved the compact accounting for 2003 and the compact accounting for 2004 is scheduled to be complete by July 2005. Each year thereafter will require model updates and new accounting using data from the past year.
- Kansas must ensure continued compliance with the terms of the compact and the settlement, particularly in northwest Kansas.
- Kansas must review annual data provided by Nebraska and Colorado, including spot-checking data in the field, to ensure that Nebraska and Colorado comply with the compact and settlement.

- Kansas must monitor the Harlan County Reservoir irrigation water supply and the dry-year administration required by the settlement.
- Kansas must complete its portion of the five-year study of impacts nonfederal reservoirs and land terracing have on the basin's virgin water supply. Most of Kansas' contribution to this study is expected to be in in-kind services.
- Kansas agreed to support authorization and funding for the lower Republican River feasibility study by the Bureau of Reclamation, and we will be expected to commit to 25 percent of its cost. We anticipate our share to be \$125,000 in fiscal year 2006, \$125,000 in fiscal year 2007 and \$62,500 in fiscal year 2008. This study will look for ways to increase the usable water supply to the lower Republican River basin in Kansas, such as by storing additional high flows for later use. This could provide a dual benefit by providing water for minimum desirable streamflow and could lead to less regulation of downstream junior water rights. We are pleased that Governor Sebelius has recommended funding for the study in fiscal year 2006, and we will work with the Legislature, the state of Nebraska and Congress to move forward with this project.
- As we make the transition from litigation to implementation of the settlement, the Division of Water Resources will continue to work with its consultants to learn to operate the groundwater model and to complete model enhancements so we can evaluate future scenarios and other special-purpose runs of the model.

The Republican River basin continues to be in a drought and the water supply is very low. If current conditions persist, the first water-short-year compliance check provided in the settlement will be for 2005 to 2006. The first five-year running average will be 2003 through 2007. If Nebraska or Colorado do not comply with settlement terms, Kansas needs to be prepared to pursue enforcement through the settlement's dispute resolution procedures and litigation, if necessary.

Kansas-Colorado Arkansas River Compact Litigation.

In 1949, Kansas and Colorado entered into the Arkansas River Compact. See Attachment C for a map showing the extent of the Arkansas River basin in Colorado and the upper Arkansas River basin in Kansas.

Kansas filed suit in 1985 in the U.S. Supreme Court to enforce the terms of the compact. In 1995, the court found Colorado in violation of the compact due to groundwater pumping that depleted the useable flows of the Arkansas River. Since then, court proceedings have concentrated on quantifying the violation, determining damages and ensuring that Colorado comes into compliance. On December 7, 2004, the U.S. Supreme Court affirmed the special master's recommendations in his fourth report and remanded the case back to him to prepare the judgment and final court decree. The court has ruled on the following issues:

- The court has cleared the way for Kansas to receive payment from Colorado for past compact violations. The sum should be about \$29 million plus ongoing interest until paid. The exact amount and other requirements will be set forth in the judgment. I will discuss statutory provisions regarding disposition of this money in a few minutes.
- Colorado is limited to 15,000 acre-feet of well pumping each year, unless well pumping effects on usable state line flow are replaced in accordance with new rules and plans approved by the Colorado state engineer. Typically, this would be by using pre-compact surface water rights or water imported into the basin to offset the effect of pumping on the river. Existing wells in the basin in Colorado are well-documented, and well pumping is estimated monthly from power records and reported to Kansas. The practical effect of this is that only about half of the 1,800 wells pumping when the lawsuit was filed are still pumping. Kansas has been receiving more water at the state line because well pumping in Colorado has decreased dramatically. For instance, post-compact well pumping was more than 200,000 acre-feet a year in the 1970s and early 1980s. Since the court ruling in 1995, Colorado has limited its post-compact pumping to an average of less than 100,000 acre-feet a year and to under 50,000 acre-feet the last two years because of drought. The depletive effect of well pumping must be replaced, or offset, to avoid a decrease in usable state line flow.
- The court has adopted the hydrologic-institutional model recommended by Kansas to measure Colorado's compliance. The model includes an updated methodology to compute consumptive use by crops in Colorado, thereby increasing Colorado's water delivery obligations at the state line by 14.5 percent. You should know that Colorado is spending \$750,000 on new studies to substantiate model adjustments that will undercut this ruling, and Kansas must be prepared to respond to Colorado's data, studies and proposals.
- The court affirmed that Colorado must achieve compact compliance on an ongoing, real-time basis by continuing monthly replacement of river depletion due to groundwater pumping based on Colorado's regulations.
- The court reaffirmed Kansas' right to return to court should our states continue to disagree. They did not appoint a river master to help resolve technical disputes as we had requested. They encouraged our states to work through the compact administration, or use arbitration or mediation. This will require continued diligence.
- The court retained jurisdiction until after 2006 to evaluate the adequacy of Colorado's compliance.

Discussion on drafting the decree is under way. A status conference before the special master is scheduled for February 4, 2005, during which we will identify components of the decree, decide on a process to draft the decree and establish a schedule for completing it. Drafting the decree is extremely important, and it will need to be very detailed to protect Kansas

in the future. It will be time consuming and possibly contentious. Also, Kansas will help with several other tasks in the coming year:

- We will update the hydrologic-institutional model for 2000 through 2004. This will include receiving data from Colorado, reviewing that data and updating the model to deal with changing water administration in Colorado.
- We will continue to monitor practices in Colorado and review their irrigated acreage survey update.
- We will continue to work with our consultants to learn how to run the hydrologic-institutional model and how to evaluate Colorado's operations.
- We will seek to resolve pending disputes relating to reservoir accounting and water delivery to Kansas through the compact administration.
- We are working with KDHE to respond to federal legislation supported by Colorado interests. It would change the operation of the Bureau of Reclamation's Pueblo Reservoir and authorize a feasibility study to increase its storage capacity. We are concerned about how it could impact the quantity and quality of water Kansas receives from the Arkansas River.

Disposition of damage funds to be received from Colorado

It is uncertain when damages will be paid, but it could be as early as next fiscal year. The Kansas Legislature decided in 1996 that damages would be deposited into three separate funds and they established criteria for how it should be used. See Attachment D for statutory language.

First, an amount equal to the cost of litigation is to be paid into an **interstate water litigation fund** to be used for:

1. current or future litigation, or to prepare for future litigation with another state, the federal government or an Indian nation, to resolve a dispute concerning water; or
2. monitoring or enforcing compliance with the terms of an interstate water compact or a settlement, judgment or decree in past or future litigation to resolve a dispute with another state, the federal government or an Indian nation concerning water.

By law, it also is to be used to repay those who contributed money to fund the litigation, which primarily were the irrigation ditches from the Garden City area that helped fund the case early on.

The money from this fund could be used to monitor and enforce Colorado's compliance with the Arkansas River decree, and to monitor and enforce Nebraska and Colorado's compliance with the Republican River settlement and decree. In both cases, we may need to pursue enforcement action through arbitration or mediation, or seek compliance with the decree through the court.

It's possible that litigation may be needed to protect Kansas' equitable share of the Missouri River in a case brought by others. We currently participate in the Missouri River Basin Association and are working with other states to help with the Corps of Engineers' Missouri River Recovery Implementation Plan, which will frame the Corps' implementation of the revised Master Operations Manual for the big reservoirs on the Missouri River.

Second, two-thirds of the remaining funds will go into the **water conservation projects fund** to pay for water management, conservation, administration and delivery costs in the upper Arkansas River basin in Kansas, the area most directly impacted by Colorado's violations of the compact. An ad hoc group that includes staff from our Garden City field office, the Kansas Water Office, Southwest Kansas Groundwater Management District No. 3, and irrigation ditch associations that depend on the flows of the river, is meeting to develop projects and prioritize recommendations for using money from this fund. The fund is to be administered by the Kansas Water Office with projects approved by the chief engineer.

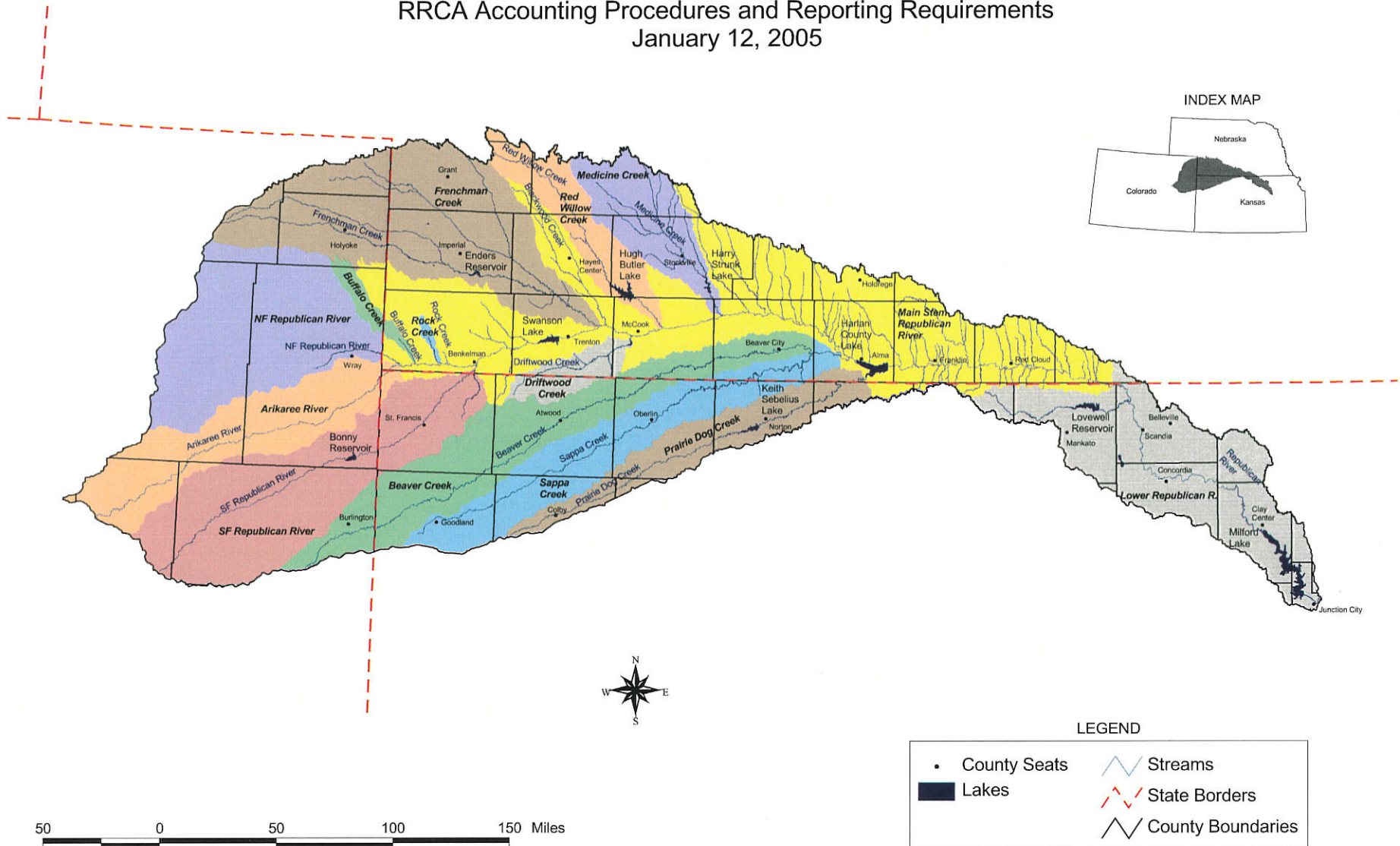
Third, one-third of the remaining funds will go into the **State Water Plan Fund** to be used for water conservation projects anywhere in the state.

Except for repaying existing obligations, I believe it prudent to defer decisions regarding how these funds will be used until thoughtful proposals can be developed and brought to the Legislature through the budget process next year.

Summary

Kansas has had great success in both cases, but to enjoy and protect those successes, we must be diligent in drafting a detailed decree in the Arkansas River case, carry out our promises in the Republican River settlement, and monitor compliance of upstream states in both cases. To do this will require significant manpower and financial resources.

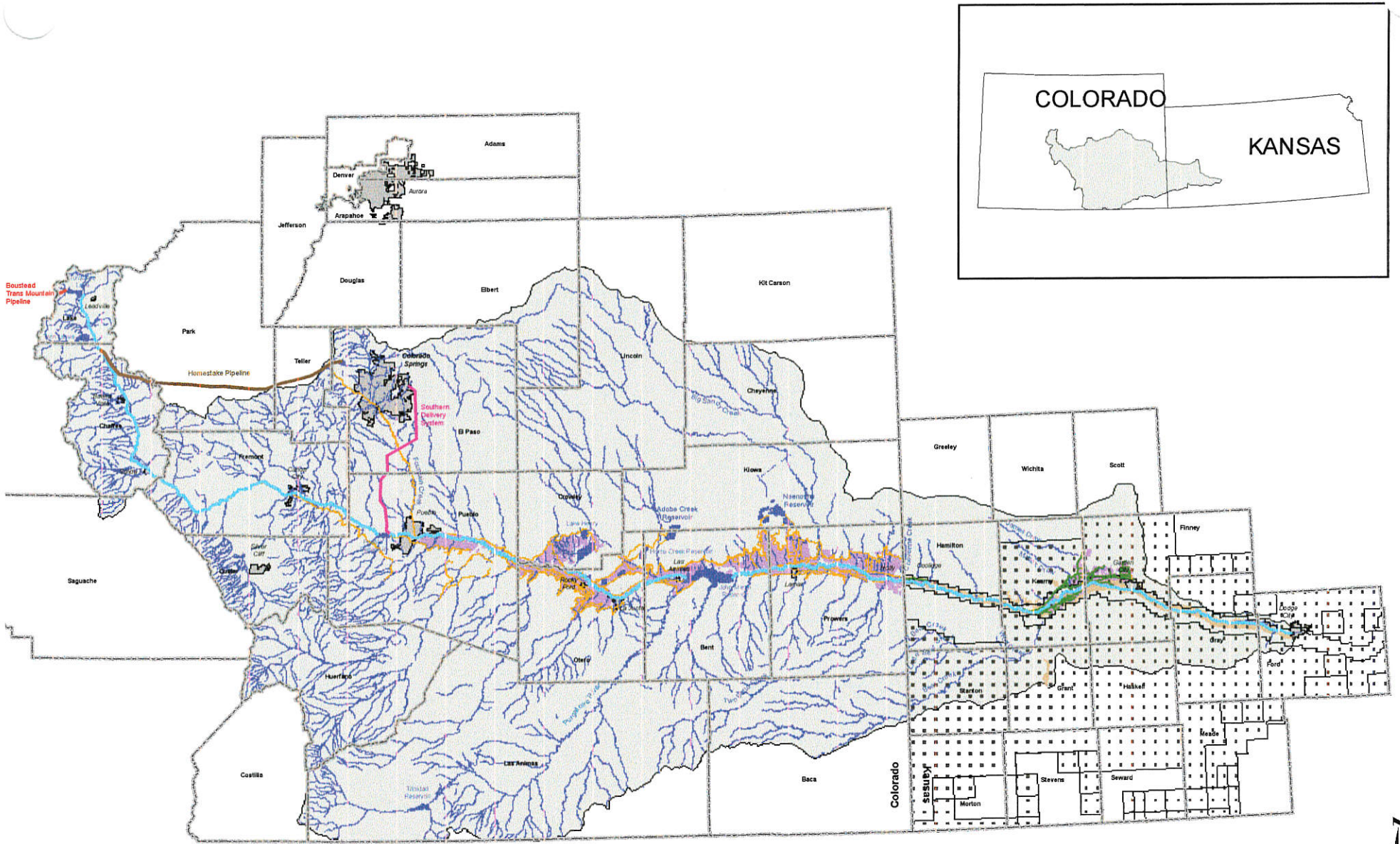
Update of Figure 3 - Map Showing Sub-basins, Streams, and the Basin Boundaries
 RRCA Accounting Procedures and Reporting Requirements
 January 12, 2005



Attachment B

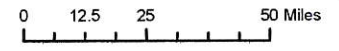
General provisions of the Republican River settlement, Kansas vs. Nebraska and Colorado

- A moratorium on new large-capacity wells has been put in place in most of the basin in Nebraska. Colorado and Kansas must maintain their existing restrictions on new uses in the upper part of the basin, which are quite restrictive, and essentially represent a “defacto” moratorium. This applies to the portion of the basin in northwest Kansas, which is upstream from Nebraska.
- The settlement requires all three states to limit their consumptive use of water, including the effect of groundwater use on streamflow, to their compact allocations as determined by the provisions of the settlement. This should ensure that Kansas will get its compact allocation for the downstream portion of Kansas. Because we have been diligent in past restrictions of water use, we also were able to protect existing water use in the upper part of the basin in northwest Kansas under all but the most extreme circumstances. Both Nebraska and Colorado will need to reduce existing consumptive uses to comply with the compact.
- The settlement contains detailed accounting formulas, data collection and reporting requirements that will be used to determine compact compliance, including using a jointly developed computer model to determine the impact of all well pumping within the basin. For the first time, this will allow a timely, accurate and comprehensive determination of whether each state is complying with the compact.
- Each state, including Kansas, has flexibility in where it can use its water, as long as it is within its total allocation and it does not impair another state’s ability to use its allocation.
- The settlement allows each state, including Kansas, to use five-year averaging to determine compact compliance. However, during water-short years, the averaging period is reduced to two or three years to protect Kansas uses, such as the Kansas Bostwick Irrigation District, irrigators from the Republican River and its alluvium, Milford Lake, and municipal and industrial users.
- Nebraska is required to protect storage releases from Harlan County Reservoir to the Kansas Bostwick Irrigation District.
- Nebraska also is required to curtail water rights junior to 1948 below Harlan County Reservoir during water-short years.
- The settlement includes procedures for mediation and arbitration to help resolve any disputes that arise.
- The settlement calls for Kansas, Nebraska and the United States to work together to improve operational efficiencies and the usable water supply in the lower Republican River basin.



Kansas Department of Agriculture
 Division of Water Resources
 Technical Services Section
 November 10, 2004

- Legend**
- Bousteed Trans Mountain Pipeline
 - Arkansas River
 - Homestake Pipeline
 - Canals
 - Irrigated Lands
 - Alluvium
 - Southern Delivery System
 - Streams
 - Ditches
 - Closed and Restricted Areas
 - Arkansas River Basin



Attachment D

K.S.A. 82a-1801. Moneys recovered in certain litigation; disposition. (a) Amounts recovered by the state of Kansas from a settlement, judgment or decree in the litigation brought in 1985 by the state of Kansas against the state of Colorado to resolve disputes arising under the Arkansas river compact shall be deposited in the state treasury and credited as follows:

- (1) Until the aggregate amount of moneys credited to the interstate water litigation fund equals the aggregate of all amounts certified by the attorney general under subsection (b), 100% shall be credited to the interstate water litigation fund.
- (2) When the aggregate amount of moneys credited to the interstate water litigation fund equals the aggregate of all amounts certified by the attorney general under subsection (b), 33 1/3% shall be credited to the state water plan fund for use for water conservation projects and 66 2/3% shall be credited to the water conservation projects fund.
- (b) The attorney general shall certify to the director of accounts and reports any expenses incurred by the state in the litigation brought in 1985 by the state of Kansas against the state of Colorado to resolve disputes arising under the Arkansas river compact and in preparation for such litigation. **History:** L. 1996, ch. 217, § 3; May 16.

K.S.A. 82a-1802. Same; interstate water litigation fund. (a) There is hereby established in the state treasury the interstate water litigation fund, to be administered by the attorney general.

- (b) Revenue from the following sources shall be credited to the interstate water litigation fund:
 - (1) Amounts provided for by K.S.A. 82a-1801; and
 - (2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for the purposes of the fund.
- (c) From the moneys first credited to the interstate water litigation fund, persons or entities that contributed moneys to the court cost fund account of the office of the attorney general for use in the litigation described in subsection (b)(1) shall be reimbursed the amount contributed. The balance of moneys credited to the fund shall be expended only for the purpose of paying expenses incurred by the state in:
 - (1) Current or future litigation or preparation for future litigation with another state, the federal government or an Indian nation to resolve a dispute concerning water; or
 - (2) monitoring or enforcing compliance with the terms of an interstate water compact or a settlement, judgment or decree in past or future litigation to resolve a dispute with another state, the federal government or an Indian nation concerning water.
- (d) Interest attributable to moneys in the interstate water litigation fund shall be credited to the state general fund as provided by K.S.A. 75-4210a and amendments thereto.
- (e) All expenditures from the interstate water litigation fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or a person designated by the attorney general.
- (f) Unless the attorney general certifies to the director of accounts and reports as of June 30, 2001, that there is on-going litigation or preparation for litigation between the state of Kansas and another state, the federal government or an Indian nation to resolve a dispute concerning water, on July 1, 2001: (1) The director of accounts and reports shall transfer and credit all moneys in the interstate water litigation fund to the state general fund; and (2) the interstate water litigation fund shall thereupon be abolished. **History:** L. 1996, ch. 217, § 1; May 16.

K.S.A. 2004 Supp. 82a-1803. Same; water conservation projects fund. (a) There is hereby established in the state treasury the water conservation projects fund, to be administered by the director of the Kansas water office.

- (b) Revenue from the following sources shall be credited to the water conservation projects fund:

(1) Amounts provided for by K.S.A. 82a-1801; and
(2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for the purposes of the fund.
(c) Moneys credited to the water conservation projects fund may be expended only for the purpose of paying all or a portion of the costs of the following water management, conservation, administration and delivery projects, and similar types of projects, in those areas of the state lying in the upper Arkansas river basin and directly impacted by the provisions of the Arkansas river compact between this state and the state of Colorado:

- (1) Efficiency improvements to canals or laterals owned by a ditch company or projects to improve the operational efficiency or management of such canals or laterals;
 - (2) water use efficiency devices, tailwater systems or irrigation system efficiency upgrades;
 - (3) water measurement flumes, meters, gauges, data collection platforms or related monitoring equipment;
 - (4) artificial recharge or purchase of water rights for stream recovery or aquifer restoration;
 - (5) maintenance of the Arkansas river channel; or
 - (6) monitoring and enforcement of Colorado's compliance with the Arkansas river compact.
- Moneys credited to the fund may be expended to reimburse costs of projects described by this subsection that were required by the division of water resources and commenced on or after

July 1, 1994.

(d) Any person or entity may apply to the director of the Kansas water office for the expenditure of moneys in the water conservation projects fund for the purposes provided by this section. The director of the Kansas water office and the chief engineer of the division of water resources of the Kansas department of agriculture shall review and approve each proposed project for which moneys in the fund will be expended. In reviewing and approving proposed projects, the director and the chief engineer shall give priority to:

- (1) Projects that achieve the greatest water conservation efficiency for the general good; and
 - (2) projects that have been required by the division of water resources. Upon such review and approval, the director of the Kansas water office shall request the legislature to appropriate, as a line item, moneys from the fund to pay all or a portion of the costs of the specific project, except that any project for which an aggregate of less than \$10,000 will be expended from the fund shall not require a line-item appropriation.
- (e) Interest attributable to moneys in the water conservation projects fund shall be credited to the state general fund as provided by K.S.A. 75-4210a and amendments thereto.
- (f) All expenditures from the water conservation projects fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas water office or a person designated by the director of the Kansas water office. **History:** L. 1996, ch. 217, § 2; May 16; L. 2003, ch. 101, § 182; July 1.