



Kansas-Colorado Arkansas River Compact



Compact Arises Out of Interstate Litigation

Some of Kansas’ earliest irrigation developed in the Arkansas River valley in southwest Kansas, where six active irrigation ditches remain between the Colorado-Kansas state line and Garden City.

Kansas and Colorado, and their residents, have a long history of disputes and litigation over the apportionment of Arkansas River waters dating to 1902.

The Arkansas River Compact was negotiated in 1948 between the states to settle existing disputes, remove causes of future controversy, and to equitably divide and apportion the waters of the Arkansas River between the states. The compact marked the culmination of decades of failed settlements and temporary agreements.

How the Compact Allocates Arkansas River Water

Principally, the compact seeks to protect the status quo as of 1949 and to allocate the benefits of the remaining water supply and water stored in John Martin Reservoir.

The compact stipulated that any future development should not materially deplete flows that would otherwise be available to Kansas. Rather than provide a specific allocation of water to the states, the compact allowed each state to call for water to be released from John Martin up to a maximum rate, regardless of any similar call by the other state.

Without specific allocations, both Kansas and Colorado sought to use any stored water quickly—before the other state used it all—in what became known as the “race to the reservoir.”

In the late 1970s, the states realized that conservation storage in John Martin could be used more effectively and developed an operating plan with a system of storage accounts. The 1980 operating plan provided that compact waters stored in John Martin would be allocated 40 percent to Kansas and 60 percent to Colorado. Kansas irrigation ditches benefit from the operating plan since they can call for water during peak demand by summer crops, usually in July, rather than April or May, as they had done before the plan was developed.

Litigation Regarding the Compact

After the compact was adopted by the states and Congress, Colorado allowed high-capacity irrigation wells to be developed in the Arkansas River valley. The well pumping reduced river flow and materially depleted water that would have been available to Kansas. Kansas filed *Kansas v. Colorado*, No. 105, Original, in 1985 to enforce the terms of the Arkansas River Compact. The U.S. Supreme Court appointed Arthur L. Littleworth as special master for this case.

In 1995, on the special master's recommendation, the court found that Colorado's post-compact well pumping violated the compact. The case then went into a remedies phase to determine damages and compensation for Colorado's past violations. In April 2005, Colorado paid Kansas more than \$34 million in damages for Colorado's compact violations from 1950 through 1999 and more than \$1 million in legal costs in June 2006. Some of this money will be used for water conservation projects in the affected area, the Upper Arkansas River basin.

Following extensive negotiations between the states based on the rulings of the court, the special master submitted the judgment and decree to the Supreme Court in January 2008. Seeking to recover additional costs related to expert witness testimony and technical analyses supporting the

litigation, Kansas filed an exception to the special master's limitation on awarding costs. In March 2009, the court overruled Kansas' argument and approved entry of the judgment and decree.

Compact Compliance Efforts

The judgment and decree includes the hydrologic-institutional model and accounting procedures that are used to determine if Colorado is in compliance. Division of Water Resources staff and technical experts monitor Colorado's efforts on an ongoing basis. Each year, the accounting for the prior 10-year period is reviewed. For the periods reviewed (1997-2006 and 1998-2007), Colorado was in compliance. Based on the data available to date, it appears that Colorado will be in compliance for the third, full 10-year compliance period (1999-2008).

Some Current Issues

Colorado's Irrigation Use Rules – In June 2009, the states formally agreed to Colorado's implementation of its rules concerning irrigation pumping in Colorado's Arkansas River basin below Pueblo.

Colorado Tri-State Decree – Colorado's water court has approved a change whereby 50 percent of Colorado's Amity canal rights, including new groundwater pumping, would be transferred to power plant use. Kansas is reviewing the final decree and will monitor for effects on state-line flows.

Trinidad Operating Plan 10-Year Review – Trinidad Reservoir is upstream of John Martin. Kansas is closely reviewing the reservoir operating plan for effects on inflow into John Martin.

More information about the Arkansas River Compact is available from the Kansas Department of Agriculture at (785) 296-3717, or online at www.ksda.gov/dwr.