

Republican River Compact Enforcement

In 1943, Colorado, Nebraska and Kansas entered into the Republican River Compact to divide the entire virgin water supply of the Republican River basin.

The Republican River basin includes portion of eastern Colorado, northwest Kansas and southwest Nebraska. The Republican River eventually flows through portions of north-central Kansas to Milford Reservoir.

In the early 1980s, Kansas and Colorado stopped allowing new groundwater irrigation to be developed in the basin. Nebraska, however, continued to allow wells to be drilled.

In the mid-1980s, Kansas began to express its concern that Nebraska was not complying with the Republican River compact in several subbasins.

In 1998, after many failed attempts to resolve the dispute, Kansas filed suit against Nebraska in the U.S. Supreme Court to enforce the terms of the compact. That case was settled December 15, 2002, when the final settlement stipulation was signed by the states. That stipulation was later approved by the Supreme Court. Since then, Kansas has waited patiently for Nebraska to come into compliance with the compact.

Under the final settlement stipulation, 2006 was the first year to measure whether Nebraska complied with settlement terms for water-short years for the two-year period from 2005 to 2006. According to our calculations, Nebraska used 82,240 acre-feet more water than it was entitled to in 2005 and 2006.

A city with 100,000 residents will take about 10 years to use 82,000 acre-feet of water. One acre-foot is equal to 325,851 gallons.

The settlement also specifies 2007 as the first year to measure normal-year compliance for the five-year period from 2003 through 2007. The accounting for 2007 is not done, but Nebraska's overuse from 2003 to 2006 is 143,840 acre-feet.

During the years Nebraska's overused its share of water in violation of the settlement terms, Kansas has not had adequate water for its Kansas Bostwick Irrigation District and mainstem Republican River users.

Because Nebraska has failed to comply with settlement terms, on December 19, 2007, Chief Engineer and Compact Administrator David Barfield sent a letter to Ann Bleed, his Nebraska counterpart, demanding an immediate shutdown of wells within 2.5 miles of the Republican River and its tributaries and on lands added after the year 2000, or their hydrologic equivalent.

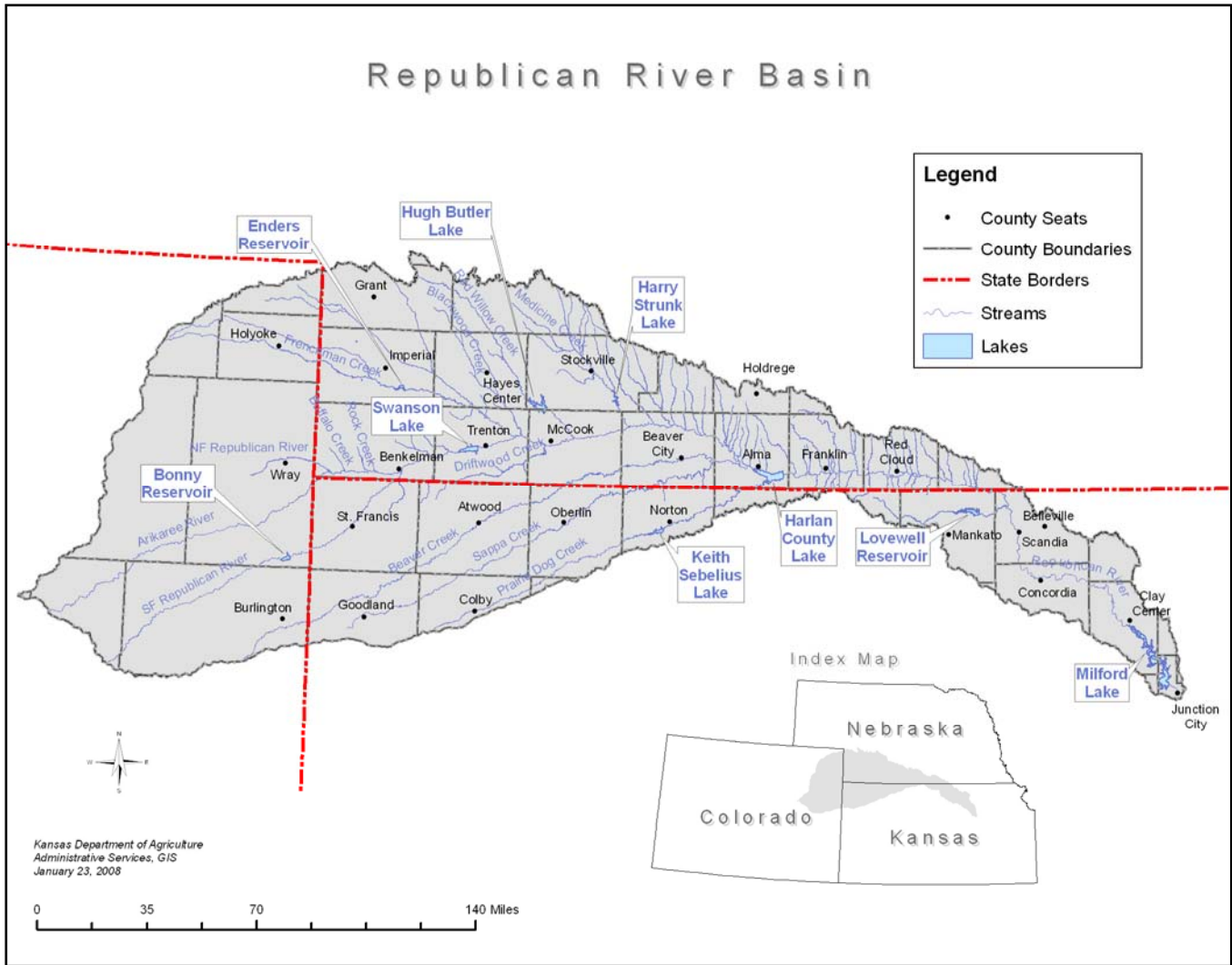
Additional actions may be needed for the next several years for Nebraska to meet water-short year obligations until stream depletion caused by groundwater pumping decreases.

Since it appears impractical for Nebraska to repay Kansas with water, Kansas has asked for monetary compensation for past shortages in an amount equal to Nebraska's gains or Kansas' losses, whichever is greater. Nebraska also is asked to pay interest, attorney fees, costs and any other relief the court deems appropriate.

Nebraska's February 4, 2008, response was that they did not agree with Kansas' analysis and demands. As a result, on February 8, 2008, Barfield requested the dispute be considered by the compact administration, the first step in a dispute resolution process prescribed by the settlement.

The compact administration met March 11 and 12 to consider Kansas and Nebraska's dispute over Kansas' proposed remedy for Nebraska's overuse of Republican River basin water in 2005 and 2006 in violation of the compact and final settlement.

At the meeting, Nebraska gave a presentation on its plan to reach compliance with the compact and



settlement. Nebraska also provided information on its concerns with compact accounting and the analysis that underlies Kansas' proposed remedy. While Kansas has reserved the right to proceed with the dispute resolution process at any time, compact commissioners agreed to meet several times over the next couple of months to review these matters in more depth.

Colorado also must meet its first five-year test of normal-year compliance ending with 2007. Although data for 2007 is not yet available, Colorado exceeded its allocations for 2003, 2004, 2005 and 2006, the first four years of the five-year period, by 44,270 acre-feet.

Colorado provided information at the March meeting on its proposed compliance pipeline to offset depletions. Colorado plans to purchase roughly 15,000 acre-feet of existing consumptive use water

currently used for irrigation in the North Fork Republican River basin. The water is to be pumped from 15 wells into a 12 and one-half mile long pipeline and delivered to the North Fork Republican River at the Colorado-Nebraska state line. Kansas' stance is that Colorado is overusing its South Fork Republican River allocation and must also take action to get into compliance on the south fork. The compliance pipeline proposal has been referred to the compact administration's engineering committee for review. Under the settlement terms, all three states must approve the proposal.

More information about the Republican River Compact and the final settlement stipulation is available from the Kansas Department of Agriculture at (785) 296-3717 or online at www.ksda.gov/interstate_water_issues/content/142.

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