

Republican River Compact Enforcement

Background

In 1943, Colorado, Nebraska and Kansas entered into the Republican River Compact to divide the water supply of the Republican River basin. The basin includes portions of eastern Colorado, northwest Kansas and southwest Nebraska. The Republican River eventually flows through portions of north-central Kansas to Milford Reservoir (see reverse side).

In the early 1980s, Kansas and Colorado essentially discontinued new groundwater irrigation development in the basin. Nebraska, however, continued to allow wells to be drilled. Kansas expressed its concern that Nebraska was not complying with the compact. As years passed and Nebraska development continued, Kansas' objections became more strident.

In 1998, after many failed attempts to resolve the dispute, Kansas filed suit 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 member states. The final settlement stipulation was later approved by the Supreme Court as final resolution to the litigation. For the next several years, Kansas waited patiently for Nebraska to come into compliance.

Nebraska's Noncompliance

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 Kansas' calculations, Nebraska used 79,140 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 80,000 acre-feet of water. One acre-foot equals 325,851 gallons.

During the years Nebraska overused its share of water in violation of the settlement terms, Kansas did

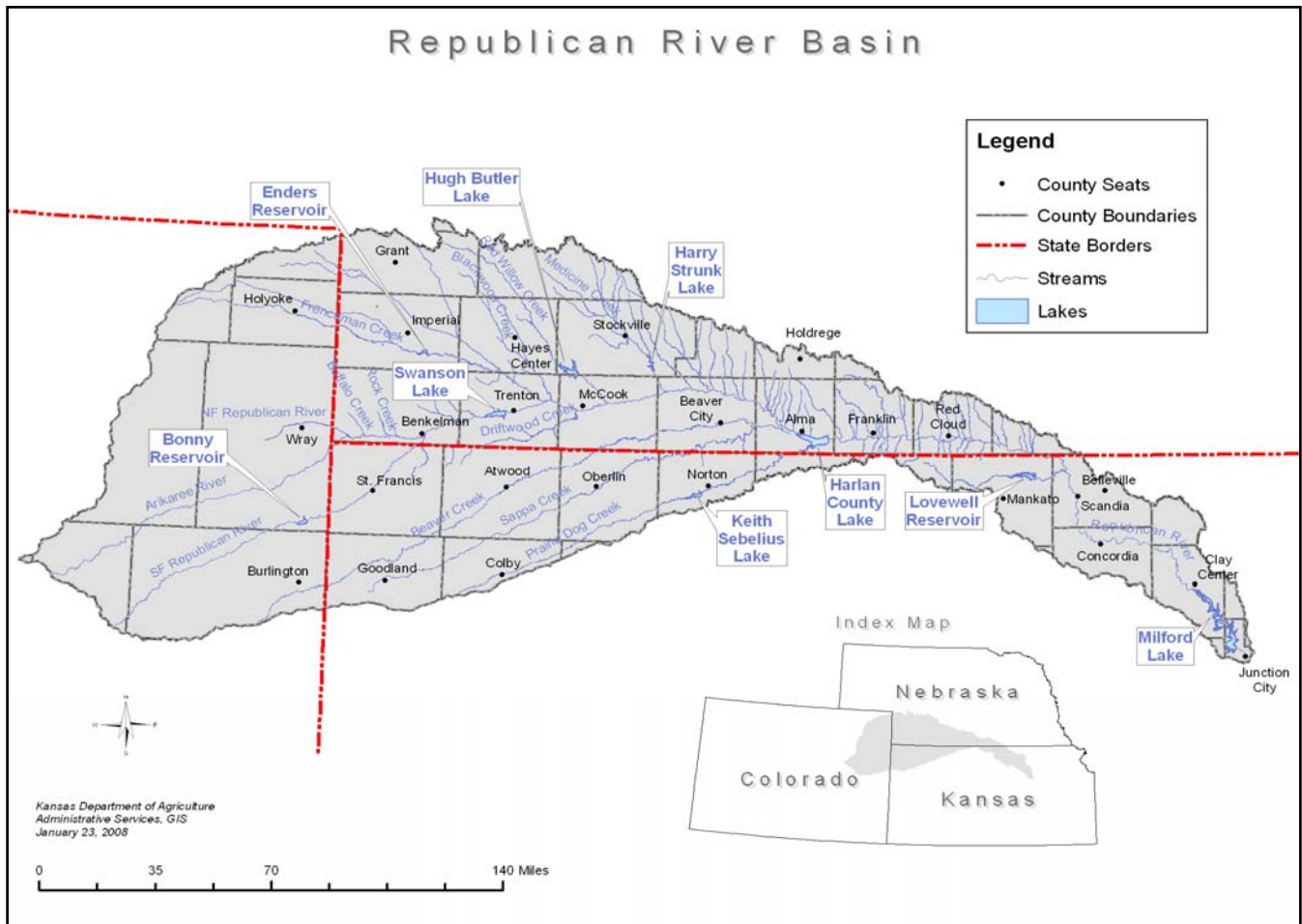
not have adequate water for its Kansas Bostwick Irrigation District and mainstem Republican River users.

In a December 2007 letter, Kansas proposed that Nebraska immediately, significantly reduce groundwater pumping in the Republican River basin to achieve future compliance with the compact and pay Kansas for damages caused by Nebraska's overuse in 2005-2006. Nebraska did not agree. Pursuant to the compact's dispute resolution process, the states entered nonbinding arbitration over Nebraska's noncompliance. When arbitration concluded on June 30, 2009, Kansas had exhausted its options under the compact's dispute resolution process.

On May 3, 2010, Kansas filed suit in the U.S. Supreme Court to enforce the final settlement stipulation. Nebraska has violated the compact and has failed to take actions necessary to avoid future violations, especially in the inevitable dry periods to come. Kansas' suit argues that Nebraska should be held in contempt of court for not obeying the court's 2003 order adopting the final settlement stipulation, the court should take action against Nebraska to ensure that Nebraska will not violate the compact again, and that Nebraska should pay damages to Kansas for violations of the decree. The suit also asks the court to take certain other actions to ensure Nebraska's compliance.

Colorado's Noncompliance

Colorado has also violated the compact. For the period 2003-2007, Colorado overused its allocation by approximately 50,000 acre-feet. Part of Colorado's overuse deprived Kansas of its specific allocation on the South Fork Republican River. Colorado acknowledges its statewide overuse and has proposed building a pipeline to deliver up to 15,000 acre-feet of water to the North Fork of the Republican River close to the Colorado-Nebraska state line.



The states began negotiations on Colorado’s proposal in 2008. Both Kansas and Nebraska raised concerns with the way Colorado’s plan and the associated accounting of the water would work. Principally, Kansas was concerned that Colorado’s plan would allow Colorado to be credited for excess water delivered to the North Fork, allowing Colorado to achieve statewide compliance while depriving South Fork users in Kansas the water to which they are entitled. Negotiations continued and Colorado declined to address Kansas’ South Fork issue.

In June 2009, Colorado’s Republican River Water Conservation District purchased 14,798 acre-feet of water rights at an estimated reported cost of over \$40 million to supply to the pipeline.

At the August 12, 2009, annual meeting of the Republican River Compact Administration, Colorado resubmitted its compliance pipeline plan to the administration for a vote. Because it did not resolve

their consistently stated concerns, Kansas and Nebraska again rejected Colorado’s proposal. Exercising their rights under the final settlement stipulation, Colorado invoked nonbinding arbitration to have the merits of its issue considered by an impartial party. Arbitration began March 29, 2010. A three-day trial is scheduled for July 2010, and the proceedings are scheduled to end with the arbitrator’s decision on September 30, 2010.

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