

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 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 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 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.

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 is equal to 325,851 gallons.

During the years Nebraska 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.

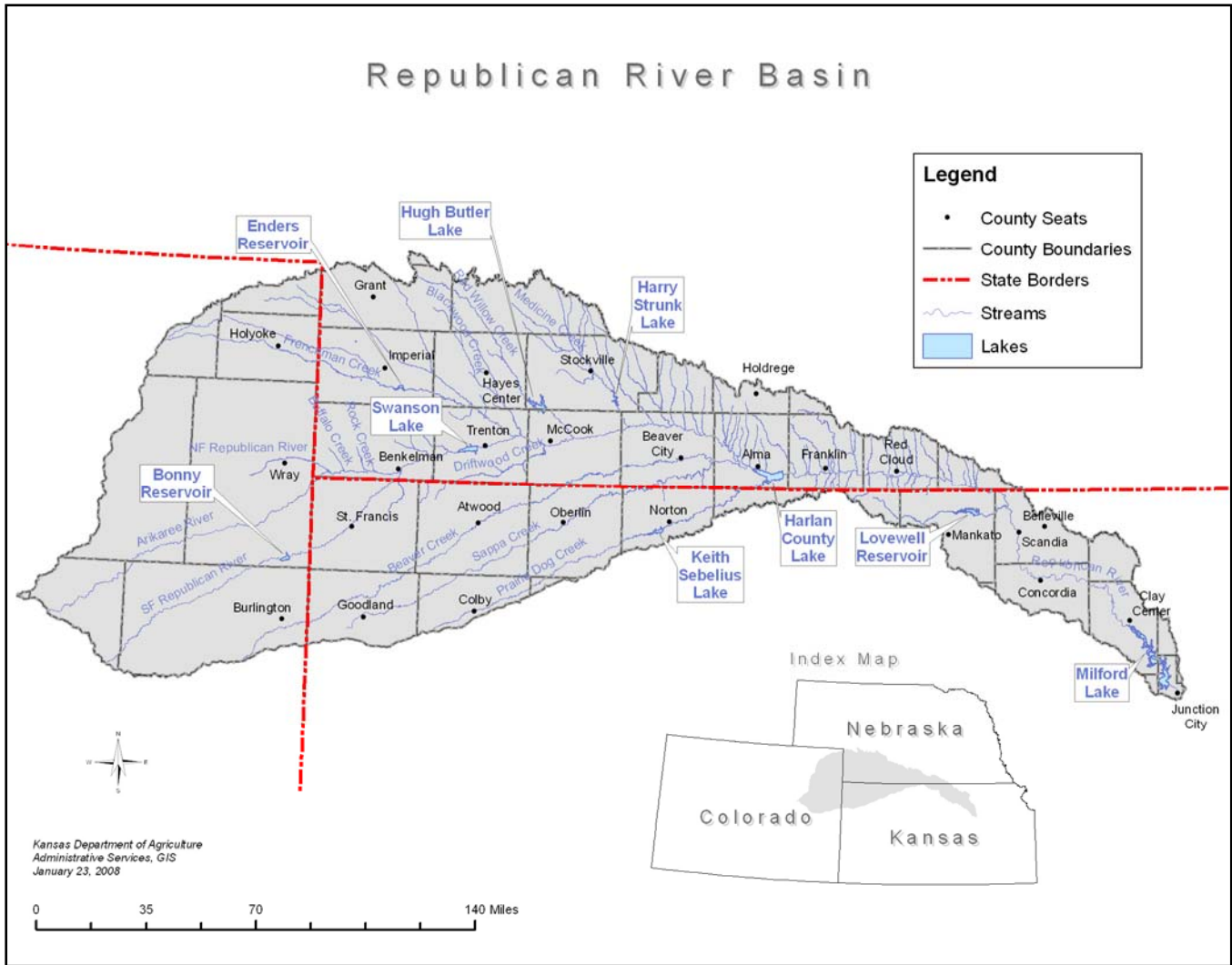
Because Nebraska failed to comply with settlement terms, on December 19, 2007, Chief Engineer and Compact Administrator David Barfield sent a letter to his Nebraska counterpart with Kansas' proposed remedy, which included an immediate shutdown of wells within 2.5 miles of the Republican River and its tributaries, and on lands added after the year 2000, or their hydrologic equivalent. Additional actions may be needed in 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, as well as for interest, attorney fees, etc. Barfield's April 22 letter provided Kansas' quantification of this amount at \$72,365,133.

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. This led to a series of additional meetings, data exchanges and committee work over two months to consider the dispute.

The compact administration met May 16, 2008, and determined that that it could not resolve Kansas' concerns, nor concerns raised by Colorado and Nebraska. On October 21, the states formally initiated nonbinding arbitration, the next step prescribed in the settlement, which will likely continue through July 2009.



The settlement also specifies 2007 as the first year to measure normal-year compliance for the five-year period from 2003 through 2007. While the final accounting for 2007 has not been agreed to by the compact administration, based on Kansas' calculations, Nebraska overused its share of water for 2003 to 2007 by approximately 118,000 acre-feet.

Colorado also must meet its first five-year test of normal-year compliance ending with 2007. Kansas' calculations indicate Colorado has exceeded its allocations for 2003 through 2007 by approximately 52,600 acre-feet. In addition, Colorado failed its south fork tributary test of compliance.

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 into a 12-mile 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 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.