THE ARKANSAS AND REPUBLICAN RIVER COMPACTS: LITIGATION AND LESSONS

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Kansas Water Compacts

- Republican River Compact
- Big Blue River Compact
- Kansas-Colorado Arkansas River Compact
- Kansas-Oklahoma Arkansas River Compact
Republican River Chronology

- 1943 Compact Approved
- 1950-1998 Major Well Development
- 1960’s Invention of the Center Pivot
- 1980’s Kansas Begins to Complain to Nebraska About Wells
- 1998 Kansas Files Suit
- 2003 U.S. Supreme Court Approves Settlement
Republican River Compact
57 Stat. 86 (1943)

- Motivation: Prerequisite for Federal Projects
- 3-State Compact
- Initially Vetoed by FDR
- Non-Navigability Provisions Removed
- Approved by Congress and the President
Republican Compact
Allocation Method
Art. I

• Major Purposes:
  – Provide for the Most Efficient Use of Waters
  – Provide an Equitable Division of Waters
  – Remove All Causes of Present and Future Controversies
  – Promote Interstate Comity
  – Recognize That Most Efficient Use is Beneficial Consumptive Use
  – Promote Joint Action by States and US for Efficient Use of Water and Flood Control
Compact Framework

• The negotiators estimated the Basin’s water supply and allocated 100 % of it to the States by major tributary (sub-basins).
  – Nebraska: 234,500 AF
  – Colorado: 54,100 AF
  – Northwest KS tributaries: 52,300 AF
  – KS main stem, 138,000 AF
9 Federal reservoirs built
6 Irrigation districts
Republican Compact
Art. III

“The specific allocations in acre-feet hereinafter made to each State are derived from the computed average annual virgin water supply originating in the following designated drainage basins, or parts thereof, in the amount shown:

North Fork of the Republican River drainage basin in Colorado, 44,700 acre-feet

* * *
Republican Compact
Art. III (cont.)

Should the future computed virgin water supply of any source vary more than ten (10) per cent from the virgin water supply as hereinabove set forth, the allocations hereinafter made from such source shall be increased or decreased in the relative proportion that the future computed virgin water supply of such source bears to the computed virgin water supply used herein."
Cumulative number of active wells in the RRCA model domain by State

[Graph showing the cumulative number of active wells in the RRCA model domain by State.]
<table>
<thead>
<tr>
<th>Year</th>
<th>Colorado</th>
<th>Kansas</th>
<th>Nebraska</th>
</tr>
</thead>
<tbody>
<tr>
<td>1940</td>
<td>5,409</td>
<td>2,952</td>
<td>22,427</td>
</tr>
<tr>
<td>1950</td>
<td>15,900</td>
<td>6,080</td>
<td>188,031</td>
</tr>
<tr>
<td>1960</td>
<td>62,736</td>
<td>50,882</td>
<td>451,385</td>
</tr>
<tr>
<td>1970</td>
<td>428,009</td>
<td>196,831</td>
<td>638,969</td>
</tr>
<tr>
<td>1980</td>
<td>664,161</td>
<td>357,710</td>
<td>1,428,685</td>
</tr>
<tr>
<td>1990</td>
<td>667,351</td>
<td>402,132</td>
<td>1,498,400</td>
</tr>
<tr>
<td>2000</td>
<td>667,891</td>
<td>434,767</td>
<td>1,654,452</td>
</tr>
</tbody>
</table>
By the late 1970’s, significant shortages began to occur
United States Supreme Court
No. 126, Original
Kansas v. Nebraska and Colorado

Republican River Basin and Model
Basin Size: 24,900 Sq. Mi.
Model Domain: ~30,000 Sq. Mi.
Irrigated Acreage: 2,757,110 Acres
Type of Model: Groundwater Flow Model, 1-Layer (MODFLOW)
Wish List For The Republican Compact

1. Explicit Consideration of Groundwater
2. Clear, Detailed Accounting Procedures
3. Explicit Time Frame for Compliance
4. Creation of Compact Administration and Detailed Specification of its Powers
5. Dispute Resolution Procedures
6. Explicit Consideration of Water Short Years
Arkansas River Compact
63 Stat. 145 (1949)

• Motivation: Prerequisite to Utilizing the Conservation Features of John Martin Reservoir

• Major Purposes:
  – Settlement of Current Controversies
  – Avoidance of future Controversies
  – Equitable Allocation of the Waters of the Arkansas and the Benefits of John Martin Reservoir
United States Supreme Court
No. 105, Original

*Kansas v. Colorado*

- Arkansas River Basin and Model
- Basin Size: 25,400 Sq. Mi.
- Model Domain: ~450 Sq. Mi.
- Irrigated Acreage: 300,000 Acres
- Type of Model: Linked
  Groundwater/Surface Water
Arkansas River Chronology

- 1901 Kansas Files Suit to Enjoin Upstream Diversions
- 1902 Colorado’s Demurrer is Denied
- 1907 Kansas is Denied Relief
- 1910-1928 Lower Court Interstate Litigation
- 1928 Colorado Files Suit to Enjoin Lower Court Suits; Kansas Counterclaims for Injunction
- 1943 Supreme Court Rules for Colorado
Arkansas River Chronology (cont.)

• 1944-1948 Compact Negotiations
• 1949 Compact Approved
• 1950-1965 Major Well Development Along the River
• 1985 Kansas Files Suit
Wish List For The Arkansas Compact

1. Quantification of the Allocation
2. Explicit Consideration of Groundwater
3. Explicit Time Frame for Compliance
4. Better Dispute Resolution Procedures