

Republican River Compact

The Republican River, named for a branch of the Pawnee Indians, rises on the plains of eastern Colorado. One of the river's tributaries, the South Fork of the Republican, flows through northwestern Kansas before entering southwestern Nebraska. Several other tributaries, such as Beaver Creek, Prairie Dog Creek, and Sappa Creek, also run through northwestern Kansas before emptying into the Republican, the main stem of which flows through southern Nebraska before crossing back into Kansas just south of Superior, Nebraska. The river then joins the Smoky Hill River at Junction City, Kansas, thus creating the Kansas River.

In 1942, Kansas, Colorado, and Nebraska signed the Republican River Compact. Its purposes are to 1) provide for equitable division of such waters; 2) remove all causes of controversy; 3) promote interstate reciprocity; 4) promote joint action by the states and the United States in the efficient use of water and the control of flooding; and 5) provide for the most efficient use of waters in the Republican River basin. The Compact also allowed for the Federal government to develop water projects in the basin. Today there are seven Bureau of Reclamation reservoirs, two Corps of Engineers reservoirs, and six irrigation districts. Under the Compact agreement, approximately 49% of the water in the river was to go to Nebraska, 40% to Kansas, and 11% to Colorado. The Republican River Compact Administration was created in 1959 to arbitrate disputes among the three states.

After a number of years of disagreements over the delivery of water in the river, Kansas filed a complaint in 1998 with the U.S. Supreme Court, saying that Nebraska had breached the terms of the Compact by allowing alluvial-well proliferation that, in effect, reduced streamflow from the river. The two states resolved the 1998 complaint in 2002, but in 2007, the disagreement flared up again when Kansas said that Nebraska had overused its share of surface water, not leaving enough water for a downstream irrigation district and mainstream Republican River users. To mitigate the 2007 disagreement, Kansas has asked that Nebraska

shut down wells within 2.5 miles of the river and its tributaries and has asked for a payment of \$72 million to compensate the state for its losses. Nebraska officials responded that they have taken steps to reduce their use, and has rejected the Kansas damage claim as too high.

The 2007 Nebraska Unicameral enacted LB 701, which authorized each Natural Resources District (NRD) in the Republican River watershed to sell revenue bonds as a means to finance one-year purchases of stream and reservoir diversion rights held by irrigation districts, thereby slowing Nebraska's consumptive use. According to the legislation, repayment of the bonds was to come from property taxes levied by the NRDs against irrigated land and all real property within each NRD.

With property taxes pledged as security, the NRDs intended to raise diversion-rights funds by selling bonds to Wall Street lenders. After assuring the bonds would be sold and payments to them would be made before the end of 2007, the irrigation districts agreed not to divert any water. (Because consumption in Nebraska's portion of the watershed was thereby reduced, Nebraska officials later reported compliance with Compact limitations in 2007.)

Early last fall, a group of local property owners filed a lawsuit challenging the constitutionality of LB 701. Their claim noted Nebraska's Compact obligations to Kansas and Colorado, and after citing a precedent-setting school finance case, characterized the NRDs' collection of property taxes as an unconstitutional delegation of responsibility to governmental subdivisions. Given the uncertainty posed by the pending litigation, the Wall Street lenders canceled sale of the bonds. Consequently, the NRDs were left without a means of paying the irrigation districts. The lawsuit remains pending. Lancaster County District Court heard oral arguments in January, but a ruling has not been announced. Regardless of the outcome, an appeal to the Nebraska Supreme Court is expected.

Notwithstanding constitutional uncertainties related to the NRDs' collection of property taxes to help meet Nebraska's Compact obligations, members of the Legislature, knowing that the irrigation districts had not been paid, passed (and the Governor signed) LB 1094 in April 2008. Principally, LB 1094 appropriated \$9 million from the State's Cash Reserve Fund to pay the irrigation districts for not diverting or consuming water in 2007. The irrigation districts are now seeking payment from that funding source. To date, neither the Department of Natural Resources or any of the NRDs have agreed to pay any of the irrigation districts not to divert water in 2008.

As things now stand, Kansas and Nebraska currently disagree about the amount of reduction

necessary to bring Nebraska into compliance. The two states met recently in Kansas City to discuss a resolution. If they fail to come up with an agreement, they will begin an arbitration process.

Sources

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