



**Compact Arises
 Out of Interstate Litigation**

Some of Kansas’ earliest irrigation developed in the Arkansas River valley in southwest Kansas, where six active irrigation ditches remain between the Colorado-Kansas state line and Garden City.

Kansas and Colorado, and their residents, have a long history of disputes and litigation over the apportionment of Arkansas River waters, including a 1902 case before the U.S. Supreme Court.

The Arkansas River Compact was negotiated in 1948 between the states to settle existing disputes, remove causes of future controversy, and to equitably divide and apportion the waters of the Arkansas River between the states. The compact marked the culmination of decades of failed settlements and temporary agreements.

**How the Compact Allocates
 Arkansas River Water**

Principally, the compact seeks to protect the status quo as of 1949 and to allocate the benefits of the remaining water supply and water stored in John Martin Reservoir.

The compact stipulated that any future development should not materially deplete flows that would otherwise be available to Kansas. Rather than provide a specific allocation of water to the states, the compact allowed each state to call for water to be released from John Martin up to a maximum rate, regardless of any similar call by the other state.

Without specific allocations, both Kansas and Colorado sought to use any stored water quickly—before the other state used it all—in what became known as the “race to the reservoir.”

In the late 1970s, the states realized that conservation storage in John Martin Reservoir could be used more effectively and developed a system of storage accounts. The 1980 operating plan provided that compact waters stored in John Martin would be allocated 40 percent to Kansas and 60 percent to Colorado. Kansas irrigation ditches benefit from this plan since they can call for water during peak demand by summer crops, usually in July, rather than April or May, as they had done before the plan was developed.

Litigation Regarding the Compact

After the compact was adopted by the states and Congress, Colorado allowed high-capacity irrigation wells to be developed in the Arkansas River valley. The well pumping reduced river flow and materially depleted water that would have been available to Kansas. Kansas filed *Kansas v. Colorado*, No. 105, Original, in 1985 to enforce the terms of the Arkansas River Compact. The U.S. Supreme Court appointed a special master which heard this case and made recommendations to the court.

In 1995, on the special master's recommendation, the court found that Colorado's post-compact well pumping violated the compact. During the remedies phase, damages for Colorado's past violations were determined. In April 2005, Colorado paid Kansas more than \$34 million in damages for Colorado's compact violations from 1950 through 1999 and more than \$1 million in legal costs in June 2006. Some of this money will be used for water conservation projects in the affected area within the Upper Arkansas River basin.

Following extensive negotiations between the states based on the rulings of the court, the special master submitted the judgment and decree to the court. In March 2009, the court approved entry of the judgment and decree. Visit the Supreme Court's website for the most current documents at <http://www.supremecourt.gov/>.

Compact Compliance Efforts

The judgment and decree includes the use of a

hydrologic-institutional model and accounting procedures to determine if Colorado is in compliance. Division of Water Resources staff and technical experts monitor Colorado's efforts on an ongoing basis. Each year, the accounting for the prior 10- year period is reviewed. Colorado has been in compliance for each of the 10-year compliance periods reviewed to date.

Some Current Issues

Colorado's Pueblo Winter Water Storage Program – allows the storage of winter diversions in reservoirs and off-stream storage. Kansas has been concerned about how the water available for this program is determined.

LAWMA Water Court Decrees – Colorado's water court has approved decrees changing surface water rights allowing their use for groundwater depletions replacement. The states are working through fifteen issues that may negatively impact the water supply available to Kansas.

Agricultural Temporary Transfers – The 2013 Colorado legislature authorized pilot projects for the temporary transfer of agricultural water to municipal use. The Colorado Water Conservation Board will review project submittals and select the pilot projects to be tried.

NEPA Ark Valley Conduit (AVC) and Master Contract EIS – The Bureau of Reclamation has conducted an EIS on the AVC and Master Contract project. The final EIS was released in August 2013. The record of decision will be released in September 2013. Kansas closely reviewed the EIS and commented during the entire EIS process.

Trinidad Operating Plan 10-Year Review – Trinidad Reservoir is upstream of John Martin. Kansas is closely reviewing the reservoir operating plan for effects on inflow into John Martin. The next 10-year review will be for the period of 2005-2014.

More information about the Arkansas River Compact is available from the Kansas Department of Agriculture at (785) 296-3717, or online at <https://agriculture.ks.gov/divisions-programs/dwr>.