

## **LEGAL COMMITTEE REPORT**

### **Kansas-Oklahoma Arkansas River Commission**

At the annual meeting of the Kansas-Oklahoma Arkansas River Commission (hereinafter “the Commission”) held July 25, 2019 at Bartlesville, Oklahoma, the Legal Committee was assigned to research and advise as to (1) a reconsideration of the findings of a 2015 report from the legal committee regarding the use of excess compact funds, and (2) and to update the Commission’s rules and regulations with amendments adopted at 2019 and 2020 Commission meetings. The Legal Committee finds as follows:

#### **I. Use of Excess Compact Funds for Water Quality Projects.**

In 2015, the Legal Committee produced a report that examined the legal restrictions that might apply to the expenditure of excess compact funds by the Commission. (Attachment A) One of the issues that was addressed was the functions that the Commission should promote with such expenditures. In light of the Commission’s interest in establishing a standing committee on water quality issues, it was determined that a review of those findings may be beneficial. In summary, the 2015 report determined that Commission expenditures are not regulated by state law, not subject to federal acquisition regulations, and are limited to purposes of the compact. Specifically, the report listed the following conclusions about any expenditures or projects undertaken by the Commission:

1. It should be equally beneficial to the interests of the states of Kansas and Oklahoma;
2. It should promote one of the following three functions of the Commission:
  - a. The installation or maintenance of stream flow gauges;
  - b. The collection, analysis, or reporting of scientific data as to stream flows, water quality, conservation storage, or other compact-related information; or,
  - c. The taking of testimony and holding of Commission hearings.
3. It should not incur financial or tort liability on the part of the Commission exceeding the budgeted amount...;
4. It should not require an annual or financial contribution extending beyond the fiscal year; and
5. It should not provide a financial benefit to one of the Commissioners or Committee members personally.

Upon further review, Conclusion Nos. 1 and 5 remain good guidance. Conclusion Nos. 3 and 4 are sound legal advice and should always be taken into consideration, however, with careful legal consideration and appropriate agreements, it may be possible to support long-term projects in such a way as to not bind the Commission beyond its annual fiscal capacity. Some further explanation is required for Conclusion No. 2 in light of the narrow scope of the previous research assignment.

Conclusion No. 2 is focused on a very narrow set of acts and functions that are specifically enumerated and authorized by the Compact in Article XI. However, looking at other provisions of the Compact, we believe the Commission has authority to conduct a much broader range of water quality activities. For example, in Article I, it is a “major purpose” of the Compact to “encourage the maintenance of an active pollution-abatement program in each of the two states and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas river basin.” Further, Article IX allows the states to enter “into joint programs

for the identification and control of sources of natural pollution within the Arkansas river basin which the commission finds are of interstate significance.” Finally, Article XI, provides direct authority for the Commission to perform “all other functions required of it by the compact and do all things necessary, proper or convenient in the performance of its duties thereunder.”

Considering that analyzing water quality, identifying problems, and developing and maintaining joint programs to mitigate pollution and water quality related problems is one of the primary reasons the Compact was created, it is logical to conclude that the Commission has broad authority, both explicit and implicit in the Compact, to support, foster, develop, fund, and enter into agreements and programs that will address identified water pollution issues within the basin beyond simply installing gauges, collecting data, and holding hearings. Therefore, it is the conclusion of the Legal Committee that the Commission may support a broad range of projects and activities that are mutually beneficial to both states and are intended to deal with pollution within the basin.

## **II. Updated Rules and Regulations.**

A redlined copy of the amended rules and regulations is attached to this report for the Commission’s review, including amendments to reflect the bonding requirements for the Commission Treasurer set in 2019 and the proposed establishment of a standing Water Quality Committee. A clean version of the rules and regulations will be included in the annual meeting report

LEGAL COMMITTEE, KANSAS-OKLAHOMA ARKANSAS RIVER COMMISSION

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