



Republican River Negotiations Result in Mediated Settlement

In 1943, the states of Nebraska, Colorado and Kansas signed the Republican River Compact in an effort aimed at equitably dividing the waters of the Republican River among the three states.

After futile attempts via the Republican River Compact Administration to resolve Kansas' concerns about Nebraska's overuse of its allocations, the two states contracted with Chris Moore and Mike Harty, of CDR Associates, to mediate the dispute. After 14 months of intense negotiation, Nebraska water users rejected a preliminary settlement proposal and negotiations broke off in March 1997.

In 1998, following several more years of Kansas' complaints, Kansas filed suit in the U.S. Supreme Court against the States of Nebraska and Colorado to enforce their compact rights.

One reason for the suit was that Nebraska was not limiting the drilling of new wells within the Republican River basin. A second reason was that Colorado and Nebraska both failed to limit the quantity of

water pumped from wells in the lower two thirds of the basin. Compact records showed that during the 1980s and 1990s Nebraska had frequently exceeded its sub-basin allocations. As a result of the decreased flow during those years, Kansas farmers and water users were unable to satisfy their water needs.

Nebraska filed a motion to dismiss the case, contending that the compact only regulated use of surface flow, and the Kansas suit was related to groundwater use. In 1999, the U.S. Supreme Court assigned Special Master Vincent McKusick to hear the case. While the Supreme Court is the only court that can decide disputes between states, it assigns water rights cases to Special Masters for motions and hearings. Special Master McKusick recommended the Supreme Court deny Nebraska's motion to dismiss because the compact restricts consumption of groundwater to the extent it depletes streamflows in the Republican River Basin. In June 2000, the Supreme Court denied Nebraska's motion to dismiss.

By October 2001—after the groundwater issue had been decided, other preliminary motions ruled on, and discovery nearly complete—confidential mediated settlement talks began among Kansas, Nebraska, and Colorado and U.S. government officials. Each party had sent a team of negotiators. The earlier mediators on the case, Moore and Harty from CDR Associates, were hired to facilitate the negotiations.

In April 2002, an Agreement in Principle was signed by the governors and attorneys general of all three states, and a Final Settlement Stipulation was signed in December, 2002. The following April, Special Master Vincent McKusick

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recommend "without reservation" the approval of the Final Settlement Stipulation, which the Supreme Court did in May 2003.

The settlement includes assurances of compact compliance by each state, taking into account the impact of wells on surface flows; providing a moratorium on the drilling of new wells; and protecting the water supply for downstream uses that rely on the Republican River.

The settlement also provides a mechanism for non-binding arbitration to resolve future disputes related to the Republican River

Compact. The states may also go before the U.S. Supreme Court to seek resolution if they are unable to come to agreement through the arbitration process.

An Associated Press article in the Grand Island Independent, titled States Agree to Model for Republican River Usage, reported: "Officials in all three states said they were pleased the three states settled the case relatively quickly. Water disputes among states can take 15 years or more to resolve."

A number of websites offer in-depth information on this case, including the *Kansas Department of Agriculture's Division of Water Resources* report on the Republican River Compact Settlement.