

No. 126, Original

In The
SUPREME COURT OF THE UNITED STATES

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA

And

STATE OF COLORADO,

Defendants.

BEFORE THE HONORABLE VINCENT L. MCKUSICK
SPECIAL MASTER

FINAL SETTLEMENT STIPULATION

December 15, 2002

Table of Contents

I.	<u>General</u>	4
II.	<u>Definitions</u>	5
III.	<u>Existing Development</u>	11
	A. Moratorium on New Wells	11
	B. Exceptions to Moratorium on New Wells	12
	C. Surface Water Limitations	17
	D. Reporting	17
IV.	<u>Compact Accounting</u>	18
	A. RRCA Accounting Procedures	18
	B. Sub-basin Accounting	18
	C. RRCA Groundwater Modeling	18
	D. Accounting Averaging	24
	E. System Improvements	24
	F. Imported Water Supply	24
	G. Measurement, Data & Reporting	25
	H. Augmentation Credit	25
V.	<u>Guide Rock</u>	25
	A. Additional Water Administration	25
	B. Water-Short Year Administration	26
VI.	<u>Soil and Water Conservation Measures</u>	30
	A. Accounting for Non-Federal Reservoirs	30
	B. Study	30
VII.	<u>Dispute Resolution</u>	32
	A. Initial Submission to RRCA	32
	B. General Dispute Resolution Provisions	34
	C. Fast Track Dispute Resolution Schedule	36
	D. Regular Dispute Resolution Schedule	37
VIII.	<u>Non-Severability of Agreement</u>	37
IX.	<u>Entirety of Agreement</u>	37
X.	<u>Retention of Jurisdiction by the Special Master</u>	38
	A. Selection of Arbitrator	38
	B. Information Sharing Requirements	38
	State Approvals of Final Settlement Stipulation	39

Appendices

- A. Proposed Consent Judgment
- B. Final Settlement Stipulation Implementation Schedule
- C. RRCA Accounting Procedures
- D. Maps – Upstream of Guide Rock, Nebraska and Moratorium Exception Areas
- E. Nebraska Laws, Rules and Regulations re: Prohibition on Well Construction
- F. Nebraska Calculation of Historic Consumptive Use
- G. Kansas Laws, Rules and Regulations re: Prohibition on Well Construction
- H. Colorado Laws, Rules and Regulations re: Prohibition on Well Construction
- I. Confidentiality Agreement
- J. Status of Agreement on RRCA Groundwater Model as of November 15, 2002
- K. Harlan County Lake Operation Consensus Plan
- L. Implementation of Additional Water Administration
- M. Alternative Water-Short Year Administration

The States of Kansas, Nebraska and Colorado, hereby enter into this Final Settlement Stipulation as of December 15, 2002:

I. General

- A. The States agree to resolve the currently pending litigation in the United States Supreme Court regarding the Republican River Compact by means of this Stipulation and the Proposed Consent Judgment attached hereto as Appendix A.
- B. The States agree to undertake the obligations set forth in this Stipulation. The States shall implement the obligations and agreements in this Stipulation in accordance with the schedule attached hereto as Appendix B.
- C. Upon the Court's approval of this Stipulation and entry of the Proposed Consent Judgment, the States agree that all claims against each other relating to the use of the waters of the Basin pursuant to the Compact with respect to activities or conditions occurring before December 15, 2002, shall be waived, forever barred and dismissed with prejudice. These claims shall include all claims for Compact violations, damages, and all claims asserted or which could have been asserted in the pending proceeding, No. 126, Original.
- D. With respect to activities or conditions occurring after December 15, 2002, the dismissal will not preclude a State from seeking enforcement of the provisions of the Compact, this Stipulation and the Proposed Consent Judgment. Nor will the dismissal preclude any State in such future action from asserting any legal theories it raised in the present proceeding, or any other legal theories, with respect to activities or conditions occurring after the date of such dismissal. The States agree that this Stipulation and the Proposed Consent Judgment are not intended to, nor could they, change the States' respective rights and obligations under the Compact. The States reserve their respective rights under the Compact to raise

any issue of Compact interpretation and enforcement in the future.

- E. Specific information-sharing requirements are set forth in the RRCA Accounting Procedures, attached hereto as Appendix C. The States will provide each other with the opportunity to inspect and copy their records pertaining to water use in the Basin, other than privileged materials, upon request. The States will cooperate in arranging verification as reasonably necessary.
- F. The RRCA may modify the RRCA Accounting Procedures, or any portion thereof, in any manner consistent with the Compact and this Stipulation.
- G. Headings in this Stipulation are provided for convenience only and shall not affect the substance of any provision.
- H. This Stipulation supersedes the Settlement Principles signed by the States on April 30, 2002.
- I. The provisions of Subsection IV.C. relating to the development of the RRCA Groundwater Model shall be in effect and enforceable between December 15, 2002 and July 1, 2003 or until the Court's approval or disapproval of this Stipulation, whichever is later.
- J. Within six months of the final dismissal of this case, the RRCA shall revise its existing rules and regulations as necessary to make them consistent with this Stipulation and the RRCA Accounting Procedures.

II. Definitions

Wherever used in this Stipulation the following terms are defined as:

Acre-foot: The quantity of water required to cover an acre to the depth of one foot, equivalent to forty-three thousand, five hundred sixty (43,560) cubic feet;

Actual Interest: A State will be deemed to have an actual interest in a dispute if resolution of the dispute could require action by the State, result in increasing or decreasing the amount of water available to a State, affect the State's ability to monitor or administer water use or water availability, or increase the State's financial obligations;

Addressed by the RRCA: A matter is deemed to be addressed by the RRCA when the RRCA has taken final action by vote on such request or failed to take action by vote on the request after a Reasonable Opportunity to investigate and act on the request;

Allocation(s): The water supply allocated to each State from the Computed Water Supply;

Annual: As defined in the RRCA Accounting Procedures Section II;

Basin: Republican River Basin as defined in Article II of the Republican River Compact;

Beneficial Consumptive Use: That use by which the Water Supply of the Basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area;

Compact: The Republican River Compact, Act of February 22, 1943, 1943 Kan. Sess. Laws 612, codified at Kan. Stat. Ann. § 82a-518 (1997); Act of February 24, 1943, 1943 Neb. Laws 377, codified at 2A Neb. Rev. Stat. App. § 1-106 (1995), Act of March 15, 1943, 1943 Colo. Sess. Laws 362, codified at Colo. Rev. Stat. §§ 37-67-101 and 37-67-102 (2001); Republican River Compact, Act of May 26, 1943, ch. 104, 57 Stat. 86;

Computed Beneficial Consumptive Use: The stream flow depletion resulting from the activities of man as listed in the definition of Computed Beneficial Consumptive Use in the RRCA Accounting Procedures Section II;

Computed Water Supply: As defined in the RRCA Accounting Procedures Section II;

Conservation Committee: The conservation measures study committee established in Subsection VI.B.1;

Court: The United States Supreme Court;

Designated Drainage Basins: The drainage basins of the specific tributaries and Main Stem of the Republican River as described in Article III of the Compact;

Dewatering Well: A Well constructed solely for the purpose of lowering the groundwater elevation;

Federal Reservoirs: Bonny Reservoir, Swanson Lake, Enders Reservoir, Hugh Butler Lake, Harry Strunk Lake, Keith Sebelius Lake, Harlan County Lake, Lovewell Reservoir;

Flood Flows: The amount of water deducted from the Virgin Water Supply as part of the computation of the Computed Water Supply due to a flood event as determined by the methodology described in the RRCA Accounting Procedures, Subsection III.B.1.;

Guide Rock: A point at the Superior-Courtland Diversion Dam on the Republican River near Guide Rock, Nebraska; the Superior-Courtland Diversion Dam gage plus any flows through the sluice gates of the dam, specifically excluding any diversions to the Superior and Courtland Canals, shall be the measure of flows at Guide Rock;

Historic Consumptive Use: That amount of water that has been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

Imported Water Supply: The water supply imported by a State from outside the Basin resulting from the activities of man;

Imported Water Supply Credit: The accretions to stream flow due to water imports from outside of the Basin as computed by the RRCA Groundwater Model. The Imported Water Supply Credit of a State shall not be included in the Virgin Water Supply and shall be counted as a credit/offset against the Computed Beneficial Consumptive Use of that State's Allocation, except as provided in Subsection V.B.2. of this Stipulation and Subsections III.I. – J. of the RRCA Accounting Procedures;

Main Stem: The Designated Drainage Basin identified in Article III of the Compact as the North Fork of the Republican River in Nebraska and the main stem of the Republican River between the junction of the North Fork and the Arikaree River and the lowest crossing of the river at the Nebraska-Kansas state line and the small tributaries thereof, and also including the drainage basin Blackwood Creek;

Main Stem Allocation: The portion of the Computed Water Supply derived from the Main Stem and the Unallocated Supply derived from the Sub-basins as shared by Kansas and Nebraska;

Modeling Committee: The joint groundwater modeling committee established in Subsection IV.C.;

Moratorium: The prohibition and limitations on construction of new Wells in the geographic area described in Section III;

Non-Federal Reservoirs: Reservoirs other than Federal Reservoirs that have a storage capacity of 15 Acre-feet or greater at the principal spillway elevation;

Northwest Kansas: Those portions of the Sub-basins within Kansas;

Proposed Consent Judgment: The document attached hereto as Appendix A;

Reasonable Opportunity: The RRCA will be deemed to have had a reasonable opportunity to investigate and act on a regular request when, at a minimum, the issue has been discussed at the next regularly scheduled annual meeting. If the RRCA agrees that an issue requires additional investigation, the RRCA may specify a period of time that constitutes a reasonable opportunity for completion of such investigation and final action on the particular issue. The RRCA will be deemed to have had a reasonable opportunity to investigate and act on a “fast-track” request when the issue has been discussed at a meeting of the RRCA no later than 30 days after the “fast-track” issue has been raised. If the RRCA agrees that a “fast track” issue requires additional investigation, the RRCA may specify a period of time that constitutes a reasonable opportunity for completion of such investigation and final action on the particular issue;

Replacement Well: A Well that replaces an existing Well that a) will not be used after construction of the new Well and b) will be abandoned within one year after such construction or is used in a manner that is excepted from the Moratorium described in Subsections III.B.1.c.- f. of this Stipulation;

RRCA: The Republican River Compact Administration, the administrative body composed of the State officials identified in Article IX of the Compact;

RRCA Accounting Procedures: The document titled “The Republican River Compact Administration Accounting Procedures and Reporting Requirements” and all attachments thereto, attached hereto as Appendix C;

RRCA Groundwater Model: The groundwater model developed under the provisions of Subsection IV.C. of this Stipulation;

State: Any of the States of Colorado, Kansas and Nebraska;

States: The States of Colorado, Kansas and Nebraska;

Stipulation: This Final Settlement Stipulation to be filed in *Kansas v. Nebraska and Colorado*, No. 126, Original, including all Appendices attached hereto;

Sub-basin: Any of the Designated Drainage Basins, except for the Main Stem, identified in Article III of the Compact;

Submitted to the RRCA: A matter is deemed to have been submitted to the RRCA when a written statement requesting action or decision by the RRCA has been delivered to the other RRCA members by a widely accepted means of communication and receipt has been confirmed;

Test hole: A hole designed solely for the purposes of obtaining information on hydrologic and/or geologic conditions;

Trenton Dam: The dam located at 40 degrees, 10 minutes, 10 seconds latitude and 101 degrees, 3 minutes, 35 seconds longitude, approximately two and one-half miles west of the town of Trenton, Nebraska;

Unallocated Supply: The “water supplies of upstream basins otherwise unallocated” as set forth in Article IV of the Compact;

Upstream of Guide Rock, Nebraska: Those areas within the Basin lying west of a line proceeding north from the Nebraska-Kansas state line and following the western edge of Webster County, Township 1, Range 9, Sections 34, 27, 22, 15, 10 and 3 through Webster County, Township 2, Range 9, Sections 34, 27 and 22; then proceeding west along the southern edge of Webster County, Township 2, Range 9, Sections 16, 17 and 18; then proceeding north following the western edge of Webster County, Township 2, Range 9, Sections 18, 7 and 6, through Webster County, Township 3, Range 9, Sections 31, 30, 19, 18, 7 and 6 to its intersection with the northern boundary of Webster County. Upstream of Guide Rock, Nebraska shall not

include that area in Kansas east of the 99° meridian and south of the Kansas-Nebraska state line. Attached to this Stipulation in Appendix D is a map that shows the areas upstream of Guide Rock, Nebraska. In the event of any conflict between this definition and Appendix D, this definition will control;

Virgin Water Supply: The Water Supply within the Basin undepleted by the activities of man.

Water Supply of the Basin or Water Supply within the Basin: The stream flows within the Basin, excluding Imported Water Supply;

Well: Any structure, device or excavation for the purpose or with the effect of obtaining groundwater for beneficial use from an aquifer, including wells, water wells, or groundwater wells as further defined and used in each State's laws, rules, and regulations.

III. Existing Development

A. Moratorium on New Wells

1. Except as provided below, the States hereby adopt a prohibition on the construction of all new Wells in the Basin upstream of Guide Rock, Nebraska (hereinafter "Moratorium"). The Moratorium may be modified, in whole or in part, by the RRCA if it determines that new information demonstrates that additional groundwater development in all or any part of the Basin that is subject to the Moratorium would not cause any State to consume more than its Allocations from the available Virgin Water Supply as calculated pursuant to Section IV of this Stipulation. New information shall mean results from the RRCA Groundwater Model or any other appropriate information. Attached hereto in Appendix E, are such laws, rules and regulations in Nebraska concerning the prohibition on construction of new Wells in the Basin.

2. Nothing in this Stipulation, and specifically this Subsection III.A., shall extend the Moratorium or create an additional Moratorium in any of the States in any other river basin or in any other groundwater supply located outside of the Basin.
3. Notwithstanding the provision in Subsection III.A.1. of this Stipulation permitting the RRCA to modify the prohibition on construction of new Wells, the States will not increase the level of development of Wells as of July 1, 2002 in the following Designated Drainage Basins, subject to the exceptions set forth in Subsection III.B.1-2.:

North Fork of the Republican River in Colorado
Arikaree River
South Fork of the Republican River
Buffalo Creek
Rock Creek

That portion of the North Fork and Main Stem of the Republican River in Nebraska that lies upstream of Trenton Dam.

Any of the States may seek to amend this provision of this Stipulation by making application to the Court upon any change in conditions making modification of this Subsection III.A.3. necessary or appropriate.

B. Exceptions to Moratorium on New Wells

1. The Moratorium shall not apply to the following:
 - a. Any and all Wells in the Basin located within the current boundaries of the following Natural Resource Districts in Nebraska:
 - i. The Tri-Basin Natural Resource District;
 - ii. The Twin Platte Natural Resource District;
and

iii. The Little Blue Natural Resource District.

Attached to this Stipulation in Appendix D is a map that shows the areas described in this Subsection III.B.1.a. In the event of any conflict between this Subsection and Appendix D, this Subsection will control;

b. Any and all Wells in the Basin in Nebraska located in the following described areas:

- i. Lincoln County, Township 9, Range 27, Sections 5-7;
- ii. Lincoln County, Township 9, Range 28, Sections 1-23, 28-30;
- iii. Lincoln County, Township 9, Range 29, Sections 1-18, 21-26;
- iv. Lincoln County, Township 9, Range 30, Sections 1-6, 8-13;
- v. Lincoln County, Township 9, Range 31, Sections 1-2;
- vi. Lincoln County, Township 10, Range 27, Sections 19-24, 27-33;
- vii. Lincoln County, Township 10, Range 28, Sections 1-36;
- viii. Lincoln County, Township 10, Range 29, Sections 1-36;
- ix. Lincoln County, Township 10, Range 30, Sections 1-36;

- x. Lincoln County, Township 10, Range 31, Sections 1-18, 20-27 and 34-36;
- xi. Lincoln County, Township 10, Range 32, Sections 1-4 and 10-13;
- xii. Lincoln County, Township 11, Range 28, Sections 28-35;
- xiii. Lincoln County, Township 11, Range 29, Sections 19-36;
- xiv. Lincoln County, Township 11, Range 30, Sections 19-36;
- xv. Lincoln County, Township 11, Range 31, Sections 19-36;
- xvi. Lincoln County, Township 11, Range 32, Sections 19-36;
- xvii. Lincoln County, Township 11, Range 33, Sections 19-30, 32-36;
- xviii. Lincoln County, Township 11, Range 34, Sections 21-27;
- xix. Frontier County, Township 6, Range 24, Sections 1-36;
- xx. Frontier County, Township 7, Range 24, Sections 1-36; and,
- xxi. Frontier County, Township 8, Range 24, Sections 19-21 and 27-36.

Attached to this Stipulation in Appendix D is a map that shows the areas described in this Subsection III.B.1.b. In the event of any conflict

between this Subsection and Appendix D, this Subsection will control.

- c. Test holes;
- d. Dewatering Wells with an intended use of one year or less;
- e. Wells designed and constructed to pump fifty gallons per minute or less, provided that no two or more Wells that pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute;
- f. Wells designed and constructed to pump 15 Acre-feet per year or less, provided that no two or more Wells that pump 15 Acre-feet per year or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed 15 Acre-feet per year;
- g. Replacement Wells, subject to all limitations or permit conditions on the existing Well, or in the absence of any limitation or permit condition only if the Beneficial Consumptive Use of water from the new Well is no greater than the Historic Consumptive Use of water from the Well it is to replace. Nebraska will calculate Historic Consumptive Use in the manner proposed in Appendix F. Nebraska shall not change its proposed method of calculating Historic Consumptive Use before providing notice to the RRCA;
- h. Wells necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety;

- i. Wells to which a right or permit is transferred in accordance with state law, provided however, that the new Well:
 - (i) consumes no more water than the Historic Consumptive Use of water under the right or permit that is being transferred; and
 - (ii) is not a transfer of a right or permit that would cause an increased stream depletion upstream of Trenton Dam.

Nebraska will calculate Historic Consumptive Use in the manner proposed in Appendix F. Nebraska shall not change its proposed method of calculating Historic Consumptive Use before providing notice to the RRCA;

- j. Wells for expansion of municipal and industrial uses. Any new Wells for these purposes shall be counted against the State's Allocation and, to the extent a State is consuming its full Allocation, other uses shall be reduced to stay within the State's Allocation; and
- k. Wells acquired or constructed by a State for the sole purpose of offsetting stream depletions in order to comply with its Compact Allocations. Provided that, such Wells shall not cause any new net depletion to stream flow either annually or long-term. The determination of net depletions from these Wells will be computed by the RRCA Groundwater Model and included in the State's Computed Beneficial Consumptive Use. Augmentation plans and related accounting procedures submitted under this Subsection III.B.1.k. shall be approved by the RRCA prior to implementation.

2. The Moratorium shall not apply to nor create any additional limitations on new Wells in Northwest Kansas and Colorado in the Basin other than those imposed by state laws, rules and regulations in existence as of April 30, 2002. Provided however, that the Historic Consumptive Use of a Well in Colorado or Northwest Kansas that is or would have been accounted for in Compact accounting as a stream depletion reaching the Republican River downstream of Trenton Dam may not be transferred to a Well that would cause a depletion reaching the Republican River upstream of Trenton Dam. Further, neither Colorado nor Kansas shall change their laws, rules or regulations in existence as of April 30, 2002, to the extent that such changes would result in restrictions less stringent than those set forth in Subsection III.B.1. above. Attached hereto in Appendices G and H, respectively, are such laws, rules and regulations in Northwest Kansas and Colorado in existence as of April 30, 2002.

C. Surface Water Limitations

Each of the States has closed or substantially limited its portion of the Basin above Hardy, Nebraska to new surface water rights or permits. Each State agrees to notify each Official Member of the RRCA and the U. S. Bureau of Reclamation at least 60 days prior to a new surface water right or permit being granted or prior to adopting changes to its current restrictions related to granting new surface water rights or permits in the Basin above Hardy, Nebraska and provide the RRCA an opportunity for discussion. Each State, however, reserves the right to allow new surface water rights or permits to use additional surface water if such use can be made within the State's Compact Allocation.

D. Reporting

Beginning on April 15, 2003, or such other date as may be agreed to by the RRCA and on the same date each year thereafter, each State will provide the other States with an annual report for the previous year of all Well construction in

the State within the Basin Upstream of Guide Rock, Nebraska and all denials of Well permits or other requests for Well construction. The report shall include such information as required by the RRCA Accounting Procedures, Section V.

IV. Compact Accounting

- A. The States will determine Virgin Water Supply, Computed Water Supply, Allocations, Imported Water Supply Credit, augmentation credit and Computed Beneficial Consumptive Use based on a methodology set forth in the RRCA Accounting Procedures, attached hereto as Appendix C.
- B. Water derived from Sub-basins in excess of a State's specific Sub-basin Allocations is available for use by each of the States to the extent that:
 - 1. such water is physically available;
 - 2. use of such water does not impair the ability of another State to use its Sub-basin Allocation within the same Sub-basin;
 - 3. use of such water does not cause the State using such water to exceed its total statewide Allocation; and
 - 4. if Water-Short Year Administration is in effect, such use is consistent with the requirements of Subsection V.B.
- C. Determination of stream flow depletions caused by Well pumping and determination of Imported Water Supply Credit will be accomplished by the RRCA Groundwater Model as used in the RRCA Accounting Procedures.
 - 1. Stream flow depletions caused by Well pumping for Beneficial Consumptive Use will be included in the determination of Virgin Water Supply, Computed Water Supply, Allocations and Computed Beneficial Consumptive Use in accordance with the formulas in the RRCA Accounting Procedures provided that the RRCA

may agree to exclude from such accounting minimal stream flow depletions. Stream flow depletions caused by Well pumping for Beneficial Consumptive Use will be counted as Virgin Water Supply and Computed Beneficial Consumptive Use at the time and to the extent the stream flow depletion occurs and will be charged to the State where the Beneficial Consumptive Use occurs.

2. The States agree to devote the necessary time and resources, subject to legislative appropriations, to complete the RRCA Groundwater Model in consultation with the appropriate United States agencies.
3. The States have created a Modeling Committee, comprised of members designated by the States and the United States. Each State may appoint at least one member but no more than three to the Modeling Committee. The United States may designate no more than two representatives to the Modeling Committee. The Modeling Committee shall develop a groundwater model acceptable to the States to accomplish the purposes set forth in this Subsection IV.C. The meetings and other work of the Modeling Committee shall be subject to the Confidentiality Agreement dated October 19, 2001, signed by the States and the United States, attached hereto as Appendix I.

Nothing in this Stipulation shall be construed as limiting the attendance and observation by non-member representatives of the participants at any meeting of the Modeling Committee or participation by non-members in the independent work of the States and United States representatives.

4. The States and the United States have agreed to freely and immediately share all available data, information, expert knowledge, and other information necessary for the Modeling Committee to complete the modeling work as requested by any member of the Modeling Committee. Data and information is considered to be “available” if it

is not otherwise privileged and is (1) used by a State in the modeling process, or (2) is in the possession or control of a State, including its political subdivisions, in the form that the information exists at the time of the request. Data and information “necessary to complete the modeling work” also includes any available information to verify any other data and information. Shared information shall be subject to the Confidentiality Agreement dated October 19, 2001, signed by the States and the United States.

5. If at any time, the members of the Modeling Committee cannot reach agreement on necessary modifications to the RRCA Groundwater Model or any other issues, the Modeling Committee shall report the nature of the dispute to the States promptly and the States shall resolve the dispute as soon as possible.
6. The structure of the RRCA Groundwater Model, together with agreed upon architecture, parameters, procedures and calibration targets as of November 15, 2002, are described in the memorandum attached hereto as Appendix J.
7. The Modeling Committee shall submit the RRCA Groundwater Model to the States in final form with sufficient time for the States to review and agree to the RRCA Groundwater Model by July 1, 2003.
8. Upon agreement by the States to the RRCA Groundwater Model, the States, through the RRCA, shall adopt the RRCA Groundwater Model for purposes of Compact accounting. Following final dismissal of this case, the RRCA may modify the RRCA Groundwater Model or the associated methodologies after discussion with the U.S. Geological Survey.
9. Between December 15, 2002 and July 1, 2003, if the States are unable to agree upon the final RRCA Groundwater Model or if any disputes arise in the

Modeling Committee that the States cannot resolve, the dispute will be submitted to binding expert arbitration for resolution as set forth in this Subsection IV.C.9. No State may invoke binding arbitration unless it has first raised the issue it seeks to have arbitrated in the Modeling Committee and to the States as provided for in Subsection IV.C.5. For purposes of this Subsection IV.C.9., written communications required by this Subsection IV.C.9. shall be provided by both U.S. Mail and by facsimile to both counsel of record and the Official Member of the RRCA for each State and to counsel of record for the United States.

- a. Initiation: Any State may invoke binding arbitration by providing written notice to the other States on or before July 1, 2003. A copy of any notice will be provided to the United States at the same time. Notice for the purposes of this Section shall include a written description of the scope of the dispute, with sufficient detail to provide the States with an understanding of the substance of the dispute and all related issues, a description of all attempts to resolve the dispute and sufficient information for the other States to identify the technical skills that should be possessed by potential arbitrators necessary to resolve the dispute. Upon receipt of notice, each State has five business days to amend the scope of the dispute in writing to address additional issues. If unforeseen issues are identified after the deadline for amending the scope of the dispute, they may be added upon agreement of the States or at the discretion of the arbitrator.
- b. Selection: Upon receipt of notice of a dispute, the States shall confer within the deadlines set forth below to choose an arbitrator(s) and the States will in good faith attempt to agree on an arbitrator(s).

- i. Within seven business days of receipt of the initial notice, each State shall submit the names of proposed arbitrators, including qualifications, to the other States. Within seven business days of receipt of the proposed names, the States will meet, in person or by telephone conference, and confer to agree on an arbitrator(s).
- ii. If the States are unable to agree on an arbitrator(s), within seven business days each State will propose an arbitrator(s), not to exceed two and shall submit the proposed names to the other States and the United States in writing within the time set forth below. Upon receipt of each State's list of proposed arbitrators, within seven business days each State will rank and comment on each proposed arbitrator and submit those comments in writing to the Special Master. The United States, as amicus, may submit rankings and comments to the Special Master. The Special Master will initially eliminate any proposed arbitrators from consideration based upon objections by any State of conflict and/or bias. If all of a State's choices are eliminated by conflict and/or bias, a State may submit the name of an additional arbitrator and each State and the United States may provide comments and objections based on conflict and/or bias within a time limit set by the Special Master.
- iii. Any person submitted as a possible arbitrator by any State shall not be an employee or agent of any State, shall be a person knowledgeable in groundwater modeling, and shall disclose any actual or potential conflict of interest and all current

or prior contractual and other relationships with any person or entity who could be directly affected by resolution of the dispute. Any person who has a contractual relationship with any State shall be automatically disqualified for conflict of interest unless the other States expressly agree in writing to submission of that person's name to the Special Master. Any other contested claims of conflict or bias will be resolved by the Special Master.

- iv. The Special Master will then choose an arbitrator(s) from the remaining non-conflicted choices.
- c. First Arbitration Meeting: Upon selection of an arbitrator(s), the arbitrator(s) shall, within seven business days, hold an initial meeting or conference with the States and the United States, as amicus, to determine a schedule and procedures for exchange of information necessary to resolve the dispute, and for submission and resolution of the pending dispute. The arbitrator(s) may also include disputes arising under Subsection IV.C.4. The arbitrator(s) will be subject to the Confidentiality Agreement dated October 19, 2001, signed by the States and the United States.
- d. Costs: The arbitrator(s)' costs shall be paid equally by the States, subject to appropriations by the States respective legislatures. Each State and the United States, as amicus, shall bear its own costs.
- e. Reporting: The arbitrator(s)' decision will be provided to the States and the United States, as amicus, within ten business days of the close of submissions to the arbitrator(s) unless otherwise shortened or extended by agreement of all of the

States. The arbitrator(s)' written report of decision and findings will be submitted to the States and the United States, as amicus, within thirty days of providing the arbitrator(s)' decision.

f. Implementation: If the dispute is one involving the ongoing work of the Modeling Committee, the decision of the arbitrator(s) as to the resolution of the dispute shall be implemented by the Modeling Committee and their efforts shall proceed. If the dispute resolves the final RRCA Groundwater Model, the decision of the arbitrator(s) as to the final RRCA Groundwater Model shall be adopted by the RRCA for the purposes of Compact accounting.

- D. Except as described in Subsection V.B., all Compact accounting shall be done on a five-year running average in accordance with the provisions of the RRCA Accounting Procedures, attached as Appendix C. Flood flows will be removed as specified in the RRCA Accounting Procedures.
- E. The States agree to pursue in good faith, and in collaboration with the United States, system improvements in the Basin, including measures to improve the ability to utilize the water supply below Hardy, Nebraska on the main stem. The States also agree to undertake in collaboration with the United States a system operations study and after completion of the study the States will revisit the five-year running average set forth in Subsection IV.D.
- F. Beneficial Consumptive Use of Imported Water Supply shall not count as Computed Beneficial Consumptive Use or Virgin Water Supply. Credit shall be given for any remaining Imported Water Supply that is reflected in increased stream flow, except as provided in Subsection V.B. Determinations of Beneficial Consumptive Use from Imported Water Supply (whether determined expressly or by implication), and any Imported Water Supply Credit shall be calculated in accordance

with the RRCA Accounting Procedures and by using the RRCA Groundwater Model.

- G. Measurement techniques, data collection and reporting to facilitate implementation of the Stipulation are set forth in the RRCA Accounting Procedures.
 - H. Augmentation credit, as further described in Subsection III.B.1.k., shall be calculated in accordance with the RRCA Accounting Procedures and by using the RRCA Groundwater Model.
- V. Guide Rock
- A. Additional Water Administration
 - 1. To provide for regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam, Nebraska will recognize a priority date of February 26, 1948 for Kansas Bostwick Irrigation District, which is the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
 - 2. When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 Acre-feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in the Harlan County Lake Operation Consensus Plan attached as Appendix K to this Stipulation, Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock. A description of the implementation of the water administration obligations in this Subsection V.A.2.is attached hereto as Appendix L. The RRCA may modify Appendix L in any manner consistent with this Stipulation and the Compact.

3. Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
4. Kansas and Nebraska, in collaboration with the United States, agree to take actions to minimize the bypass flows at Superior-Courtland Diversion Dam. A description of the process for meeting the obligations in this Subsection V.A.4 is attached hereto as Appendix L. The RRCA may modify this process in any manner consistent with this Stipulation and the Compact.

B. Water-Short Year Administration

1. Identification of Water-Short Year Administration:
 - a. Water-Short Year Administration will be in effect in those years in which the projected or actual irrigation supply is less than 119,000 acre feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in the Harlan County Lake Operation Consensus Plan. If system operations enhancements below Harlan County Lake increase the useable supply to the Bostwick Irrigation Districts, the trigger for Water-Short Year Administration will be adjusted as agreed to by the States and the United States in order to equitably share the benefits of such enhancements. Following the determination that Water-Short Year Administration is in effect, the States will take the actions described in Subsections V.B.2-4.
 - b. Each year between October 1 and June 30, the Bureau of Reclamation will provide each of the States with a monthly or, if requested by any one of the States, a more frequent update of the projected or actual irrigation supply from Harlan County Lake for that irrigation season. The determination that Water-Short Year

Administration is in effect, pursuant to Subsection V.B.1.a., will become final for that year as of June 30.

2. Nebraska action in Water-Short Year Administration:
 - a. During Water-Short Year Administration, Nebraska will limit its Computed Beneficial Consumptive Use above Guide Rock to not more than Nebraska's Allocation that is derived from sources above Guide Rock, and Nebraska's share of any unused portion of Colorado's Allocation (no entitlement to Colorado's unused Allocation is implied or expressly granted by this provision). To accomplish this limitation, Nebraska may use one or more of the following measures:
 - i. supplementing water for Nebraska Bostwick Irrigation District by providing alternate supplies from below Guide Rock or from outside the Basin;
 - ii. adjusting well allocations for alluvial Wells above Guide Rock;
 - iii. adjusting multi-year well allocations for non-alluvial Wells above Guide Rock;
 - iv. reducing use of storage by Nebraska Bostwick Irrigation District above Guide Rock;
 - v. dry year leasing of water rights that divert at or above Guide Rock, or;
 - vi. any other measures that would help Nebraska limit Computed Beneficial Consumptive Use above Guide Rock to not more than that portion of Nebraska's allocation that is derived from sources above

Guide Rock and would (1) produce water above Harlan County Lake; (2) produce water below Harlan County Lake and above Guide Rock that can be diverted during the Bostwick irrigation season; or (3) produce water that can be stored and is needed to fill Lovewell Reservoir.

- b. Nebraska may offset any Computed Beneficial Consumptive Use in excess of its Allocation that is derived from sources above Guide Rock with Imported Water Supply Credit. If Nebraska chooses to exercise its option to offset with Imported Water Supply Credit, Nebraska will receive credit only for Imported Water Supply that: (1) produces water above Harlan County Lake; (2) produces water below Harlan County Lake and above Guide Rock that can be diverted during the Bostwick irrigation season; (3) produces water that can be stored and is needed to fill Lovewell Reservoir; or (4) Kansas and Nebraska will explore crediting water that is otherwise useable by Kansas.
- c. During Water-Short Year Administration, Nebraska will also limit its Computed Beneficial Consumptive Use in the Sub-basins to the sum of Nebraska's specific Sub-basin Allocations and 48.9% of the sum of the Unallocated Supply from those same Sub-basins.
- d. In years projected to be subject to Water-Short Year Administration, Nebraska will advise the other States and the United States no later than April 30 of measures Nebraska plans to take for that year and the anticipated water yield from those measures. In each Water-Short Year Administration year, Nebraska will advise the other States and the United States no later than June 30 of the measures it has taken or will take

for the year and the anticipated water yield from those measures.

- e. For purposes of determining Nebraska's compliance with Subsection V.B.2.:
 - i. Virgin Water Supply, Computed Water Supply, Allocations and Computed Beneficial Consumptive Use will be calculated on a two-year running average, as computed above Guide Rock, with any Water-Short Year Administration year treated as the second year of the two-year running average and using the prior year as the first year; or
 - ii. as an alternative, Nebraska may submit an Alternative Water-Short Year Administration Plan to the RRCA in accordance with the procedures set forth in Appendix M. The RRCA may modify Appendix M in any manner consistent with this Stipulation and the Compact.
- f. If, in the first year after Water-Short Year Administration is no longer in effect, the Compact accounting shows that Nebraska's Computed Beneficial Consumptive Use as calculated above Guide Rock in the previous year exceeded its annual Allocation above Guide Rock, and, for the current year, the expected or actual supply from Harlan County Lake, calculated pursuant to Subsection V.B.1.a., is greater than 119,000 Acre-feet but less than 130,000 Acre-feet, then Nebraska must either make up the entire amount of the previous year's Computed Beneficial Consumptive Use in excess of its Allocation, or the amount of the deficit needed to provide a projected supply in Harlan County Lake of at least 130,000 Acre-feet, whichever is less.

terracing on the water supply and water uses within the Basin, the States agree to undertake a study, in cooperation with the United States, of the impacts of Non-Federal Reservoirs and land terracing on the Virgin Water Supply.

1. The States, in cooperation with the United States, shall form a committee by January 31, 2003, to be known as the Conservation Committee. By April 30, 2004, the Conservation Committee will:
 - a. Evaluate the available methods and data relevant to studying the impacts of Non-Federal Reservoirs and land terracing practices on water supplies, including a review of any existing studies and their applicability to the Basin;
 - b. Determine the general types of data that are available and relevant to the study;
 - c. Determine the availability of data throughout the Basin, and assess the level of accuracy and precision of the data;
 - d. Agree on standards for data;
 - e. Identify additional data necessary to determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supply;
 - f. Propose a methodology for assessing area-capacity relationships for Non-Federal Reservoirs; and
 - g. Submit to the RRCA a proposed study plan to determine the quantitative effects of Non-Federal Reservoirs and land terracing practices on water supplies, including whether such effects can be determined for each Designated Drainage Basin.
2. Following the RRCA's acceptance of the proposed study plan described in Subsection VI.B.1.g., the States and the

United States will undertake the study at a cost not to exceed one million dollars of which the United States will be responsible for 75% of the cost and each State will be responsible for one third of the remaining 25%. The States' portion may be provided entirely through in-kind contributions. If the cost of the study exceeds one million dollars, the United States will be responsible for the entire additional amount. The States, in cooperation with the United States, shall agree upon the timetable for the completion of such study, which shall be completed within five years of the date the proposed study plan is accepted by the RRCA.

3. Participation in the joint study does not commit any State or the RRCA to take any action or to include soil and water conservation measures in Compact accounting. Each State specifically reserves its position that it need not account for conservation measures as a Beneficial Consumptive Use under the Compact.
4. Participation in the joint study by the States or the United States is contingent upon the appropriation of funds by their respective State Legislatures and Congress. Participation by the States in this study is contingent upon participation and funding by the United States in accordance with this Subsection VI.B.

VII. Dispute Resolution

A. Initial Submission to the RRCA:

1. Any matter relating to Republican River Compact administration, including administration and enforcement of the Stipulation in which a State has an Actual Interest, shall first be Submitted to the RRCA. The United States and its agencies may attend all meetings of the RRCA. Proposed agendas, including any regular issue that may be raised, shall be distributed by the chairperson to all RRCA members at least 30 days in advance of any

regular meeting and as soon as possible prior to any special meeting.

2. Each member of the RRCA shall have one vote on each issue Submitted to the RRCA. RRCA action must be by unanimous vote. Action of the RRCA shall be by formal resolution or as reflected in the approved minutes. A request for formal resolution may be made by any member.
3. Any dispute that the State raising the issue for RRCA determination believes requires immediate resolution shall be designated as a “fast-track” issue. Any “fast-track” issue will be Addressed by the RRCA within 30 days of being Submitted to the RRCA unless otherwise agreed to by all States. Nothing in this Section shall prohibit the RRCA from Addressing a dispute prior to the expiration of the 30-day period.
4. Any dispute which the State raising the issue for RRCA determination believes does not require immediate resolution shall be designated as a “regular” issue. Any “regular” issue raised no later than 30 days prior to the next regularly scheduled meeting will be Addressed by the RRCA at that meeting.
5. The RRCA will hold regular meetings pursuant to its rules and regulations. Specially scheduled meetings to address any issue that is Submitted to the RRCA and designated as a “fast-track” issue or for any other emergency purposes shall be held if requested by any member. All members shall make a good faith effort to arrange a mutually agreeable date, time, and place for all meetings. A meeting may be conducted only when all members or their designees are available to attend. In the event a member requests a specially scheduled meeting to address a “fast-track” issue or for any other emergency purposes, such meeting shall be held as soon as reasonably possible, but in no event more than 30 days after the request is made unless more time is agreed to by

all members. If scheduling a meeting in person is not possible within 30 days of a request, the members may conduct a telephone conference or use other means available. If any such meeting is not held within thirty days because of the failure of any member other than the requesting member to attend or to agree to the date and place for the meeting, the State represented by the requesting member shall be relieved of any obligation to submit any dispute to the RRCA for potential consideration and resolution pursuant to the Stipulation.

6. Any issue Submitted to the RRCA by a State will include a specific definition of the issue, supporting materials and a designated schedule for resolution.
7. The RRCA will attempt to resolve any dispute submitted to the RRCA pursuant to this Section VII. If such a dispute cannot be resolved by the RRCA at the regular or special meeting at which the issue is addressed or within a schedule agreed to by all States, and the State raising the dispute desires to proceed, the dispute shall be submitted to non-binding arbitration unless otherwise agreed to by all States with an Actual Interest. The States involved in the dispute may agree that the arbitration shall be binding, but no State shall be subject to binding arbitration without its express written consent.

B. General Dispute Resolution Provisions:

1. Unless otherwise agreed to by all States, non-binding arbitration shall be initiated as follows: Any State, pursuant to Subsection VII.A.7., may invoke arbitration by providing written notice to the other States. A copy of any notice will be provided to the United States at the same time. Notice for the purposes of this Section shall include the time frame designation, a written description of the scope of the dispute, with sufficient detail to provide the States with an understanding of the substance of the dispute and all related issues, and sufficient information for the other States with an Actual Interest to

identify the technical skills that should be possessed by potential arbitrators necessary to resolve the dispute.

2. The arbitrator(s) shall be selected as follows: Upon receipt of notice of a dispute, the States shall confer within the deadlines set forth below to choose an arbitrator(s) and the States will in good faith attempt to agree on an arbitrator(s).
3. Any person submitted as a possible arbitrator by any State, or selected by CDR Associates or other such entity, shall not be an employee or agent of any State, shall be a person generally knowledgeable of the principles of the issues in the dispute, and shall disclose any actual or potential conflict of interest and all current or prior contractual and other relationships with any person or entity who could be directly affected by resolution of the dispute. Any person who has a contractual relationship with any State shall be automatically disqualified for conflict of interest unless the other States expressly agree in writing.
4. The arbitrator(s)' decision shall include a determination of the merits of the dispute and determination of a proposed remedy.
5. The arbitrator(s)' decision shall be provided to the States and the United States by facsimile and mail or comparable means.
6. Within 30 days of the issuance of the arbitrator's decision, the States that are parties to the dispute shall give written notice to the other States and the United States as to whether they will accept, accept and reject in part, or reject the arbitrator's decision.
7. No State shall object to admission of the arbitrator(s)' decision in any subsequent proceedings before the Court, but no State shall assert that the decision is conclusive on any issue. Further, no State shall call the arbitrator(s) as

a witness with regard to the dispute.

8. A State that has submitted a disputed issue to the RRCA and to arbitration as provided in this Section VII shall be deemed to have exhausted its administrative remedies with regard to such issue.

C. Fast Track Dispute Resolution Schedule:

1. Upon receipt of notice under Subsection VII.B.1., each State with an interest in the dispute will have ten business days to amend the scope of the dispute to address additional issues, unless all States agree to a longer schedule. If unforeseen issues are identified after the deadline for amending the scope of the dispute, they may be added upon agreement of all States or at the discretion of the arbitrator.
2. Within ten business days of receipt of the initial notice, each State shall submit the names of proposed arbitrators, including qualifications, to the other States. Within seven business days of receipt of the proposed names, the States will meet, in person or by telephone conference, and confer to agree on an arbitrator(s). If the States with an Actual Interest cannot agree on an arbitrator(s), the selection of the arbitrator will be submitted to CDR Associates, of Boulder, Colorado, or such other person or entity that may be agreed to by the RRCA. Every two years the RRCA will review the entity that will select an arbitrator(s), if the States cannot choose. The States will be bound by the selection of an arbitrator by CDR Associates or such other person or entity.
3. Upon selection of an arbitrator(s), the arbitrator(s) shall, within seven business days, hold an initial meeting/conference with the States, to set the schedule for submission and resolution of the pending dispute. The arbitrator shall set a schedule not to exceed six months unless the States agree otherwise. The States agree to provide all information, except privileged

information, requested by the arbitrator(s).

4. The arbitrator(s) shall issue a decision resolving the dispute within the shortest reasonable time, not to exceed 60 days from the date of final submission by the State parties.

D. Regular Dispute Resolution Schedule:

1. The States with an Actual Interest will agree upon the schedule for amending the scope of the dispute.
2. The States will agree upon the method and schedule for selecting an arbitrator(s).
3. The States and the arbitrator(s) will agree on a schedule for submission and resolution of the pending dispute.
4. The States will agree on a schedule for issuance of a decision by the arbitrator(s).

VIII. Non-Severability of Agreement

The agreement of the States to the terms of this Stipulation is based upon the inclusion of all of the terms hereof, and the rights and obligations set forth in this Stipulation are not severable. If for any reason, the Court should decline to approve this Stipulation in the form presented, the entire Stipulation shall be null and void and the terms of this Stipulation may not be used as evidence in any litigation between the States.

IX. Entirety of Agreement

This Stipulation and the Proposed Consent Judgment, together constitute the entire agreement among the parties hereto. No previous representations, inducements, promises or agreements, oral or otherwise, among the parties not contained in the documents identified in this paragraph or made in compliance with the requirements and obligations contained in the documents identified in this paragraph shall be of any force or effect. Nothing in this Section IX shall be construed as preventing the States from modifying the rules and regulations of the RRCA.

X. Retention of Jurisdiction by the Special Master

The Special Master shall retain jurisdiction until adoption of the RRCA Groundwater Model to:

- A. Select an arbitrator, if necessary, pursuant to Subsection IV.C.9.b.ii. - iv.; and
- B. Resolve disputes, not then subject to arbitration pursuant to Subsection IV.C.9., concerning the exchange and availability of data and information consistent with Subsection IV.C.4.

State Approvals of Final Settlement Stipulation
Kansas v. Nebraska & Colorado, No. 126, Original,
United States Supreme Court

The undersigned Governors and Attorneys General for the States of Kansas, Nebraska and Colorado, having authority to commit the States to a final settlement, hereby commit the States to the terms of this Final Settlement Stipulation reached by their respective Settlement Negotiation Teams. Approval of this Final Settlement Stipulation is conditioned upon the inclusion of all of the terms herein, and the rights and obligations set forth in this Final Settlement Stipulation are not severable. If for any reason, the Special Master or the United States Supreme Court should decline to approve this Stipulation in the form presented, the approvals of the undersigned Governors and Attorneys General for the States shall be null and void.

Governor, State of Kansas

Attorney General, State of Kansas

Governor, State of Nebraska

Attorney General, State of Nebraska

Governor, State of Colorado

Attorney General, State of Colorado