

# Arbitrator Gives Initial Win for Kansas in Republican River Dispute

**K**ansas Attorney General Steve Six reported on Friday, October 8 that a federal arbitrator has ruled in favor of Kansas in disputes with Colorado and Nebraska over the use of water from the Republican River. In a news release, the Kansas Attorney General commented that two issues were in play regarding a compact that governs use of the water that flows from Colorado, through Kansas to Nebraska and back into northern Kansas.

First, the arbitrator agreed with Kansas' concerns about Colorado's plans to use a pipeline to put water in the river to comply with the compact. Attorney General Six's office said the issues were technical and related to how Colorado would calculate the amount of water flowing across the state line.

Second, the arbitrator rejected Nebraska's request for water credits for payments made to Kansas for failing to comply with the compact. Attorney General Six said the plan to award water credits for paying fines or damages for taking too much water would have encouraged future compact violations and deprived Kansas residents of water.

Attorney General Six issued a statement, saying the arbitrator's decisions send a message "that Kansas' concerns about their proposals are justified, appropriate and fair."

"Kansas who rely on Republican River water for their farms, businesses and communities can rest assured that we will continue to pursue the water they are entitled to under the Republican River Compact and litigation settlement terms," Six said.

Nebraska Attorney General Jon Bruning said his state would continue to defend its right use the water to which it is entitled. He claims Kansas is trying to recover damages twice – through monetary penalties and water – if Nebraska violates the compact.

"We are pleased the arbitrator recognized the importance of preventing a double recovery by Kansas, but disappointed the proposed crediting issue was not accepted," Bruning said, adding that the arbitrator did suggest Nebraska was on track for future compliance.



This photo of the Republican River taken on September 2, 2009, east of Concordia, Kansas, shows streamflow of approximately 165 c.f.s. Mean daily flow for this date at the Concordia gage is approximately 270 c.f.s.

Photo by Douglas S. Helmke, KRWA Water Rights / Source Water Specialist

If the states fail to reach agreement following the arbitrator's rulings, Six's office said it is likely the U.S. Supreme Court will again be asked to decide the matter.

The Republican River basin covers almost 25,000 square miles.

Use of the river's water is governed by a 1943 compact between Colorado, Kansas and Nebraska. Colorado was given eleven percent of the water, while Kansas was allotted forty percent and Nebraska forty-nine percent.

In the 1990s, farmers and officials in Kansas accused Nebraska of taking more than its allocated share. Kansas filed a lawsuit against Nebraska with the U.S. Supreme Court in 1998.

A settlement was reached in 2003. Officials in both states hoped it would end their legal dispute but acknowledged that monitoring and enforcement issues remained.

Kansas officials contend that in 2005 and 2006, Nebraska used 25.7 billion gallons more in water from the Republican River than it was due – enough to supply a city of 100,000 people for almost ten years. Nebraska officials acknowledged some overuse but questioned Kansas' accounting.

Nebraska was in compliance from 2007 through 2009. The arbitrator said last year that Nebraska's natural resource districts should cut back on water allocations to farmers to maintain compliance. Nebraska has rejected the suggestion.

For further reading, see the article *Republican River Rumbblings* by Douglas S. Helmke in the November 2009 issue of *The Kansas Lifeline*. It is posted online at [www.krwa.net/lifeline/currentissue/0911\\_062.pdf](http://www.krwa.net/lifeline/currentissue/0911_062.pdf)

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