

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR SENATE BILL NO. 89**

As Agreed to March 12, 2008

Brief*

Sub. for SB 89 would establish the procedure for the distribution of any moneys recovered from disputes relating to the Republican River Compact from either Colorado or Nebraska. In addition, the bill would create the Republican River Water Conservation Projects-Nebraska Moneys Fund and the Republican River Water Conservation Projects-Colorado Moneys Fund.

The bill would require that out of the first moneys received from any dispute in any litigation from both Nebraska and Colorado involving the Republican River Compact, 100 percent would be credited to the Interstate Water Litigation Fund created by KSA 82a-1802. When those moneys are credited to the Interstate Water Litigation Fund, the Director of Accounts and Reports would transfer moneys from the Fund to the Interstate Water Litigation Reserve Account of the State General Fund until the account balance reaches \$20 million. The Attorney General would certify to the Director of Accounts and Reports expenses incurred in any litigation to resolve disputes with Nebraska and Colorado on the Republican River Compact.

After the amount required to be placed in the Interstate Water Litigation Fund Reserve Account is satisfied, any remaining moneys from the State of Nebraska would be

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deposited in the Republican River Water Conservation Projects-Nebraska Moneys Fund.

Likewise, any remaining moneys from the State of Colorado would be credited to the Republican River Water Conservation Projects-Colorado Moneys Fund.

Moneys in the Republican River Water Conservation Projects-Nebraska Moneys Fund would be allocated as follows:

- One-third to the State Water Plan Fund for use for water conservation projects with priority given to those projects which will ensure the State of Kansas remain in compliance with the Republican River Compact; and
- Two-thirds to be used for conservation projects in the Lower Republican River Basin.

Of the moneys credited to the Republican River Water Conservation Projects-Colorado Moneys Fund:

- One-third of the money credited to the State Water Plan Fund for water conservation projects; and
- Two-thirds of the money to be expended only for conservation projects in those areas of the state in the Upper Republican River Basin in Northwest Kansas.

Republican River Water Conservation Projects

The bill would establish the types of projects that may be funded by the moneys in the Republican River Water Conservation Projects-Nebraska Moneys Fund and the Republican River Water Conservation Projects-Colorado Moneys Fund. These include:

- Efficiency improvements to canals or laterals managed and paid for by an irrigation district;

- Water use efficiency upgrades;
- Implementation of water conservation of irrigation and other types of water uses;
- Implementation of water management plans or actions by water right holders;
- Water measurement devices and monitoring equipment and upgrades;
- Artificial recharge, funding the water transition assistance program, purchase of water rights and cost share for state or federal conservation programs that save water;
- Maintenance of the channel and the tributaries of the Republican River;
- Reservoir maintenance or purchase, lease, construction or other acquisition of existing or new storage space in reservoirs;
- Purchase, lease, or other acquisition of a water right; and
- Expenses incurred to construct and operate off-stream storage.

The bill would permit any person or entity to apply to the Director of the Kansas Water Office for expenditure of moneys from either the Colorado Moneys Fund or Nebraska Moneys Fund. The Director and the Chief Engineer of the Division of Water Resources would review and approve each proposed project for which moneys would be expended. Interest from those two funds would be credited to the State General Fund.

Under the bill, priority for projects would be given to those needed to achieve or maintain compliance with the Republican River Compact; those that achieve greatest water conservation efficiency for the general good; and those that have been

required by the Division of Water Resources. Any project greater than \$10,000 would be required to be a line item in an appropriation bill of the Legislature.

Conference Committee Action

The Conference Committee agreed to transfer any moneys credited to the Interstate Water Litigation Fund from Nebraska and Colorado to the Interstate Water Litigation Reserve Account of the State General Fund until that account reaches a balance of \$20 million. The Conference Committee eliminated language which would have required that moneys received be placed in the Interstate Water Litigation Fund up to a maximum of \$20 million.

Background

At the hearing on the original bill, representatives of the Kansas Water Office, the Kansas Department of Agriculture, the Clay County Commission, and the Kansas River Water Assurance District 1 appeared as proponents. An individual from Republic County appeared in support of the bill. Written testimony in support of the bill was received from an individual associated with the Peoples Exchange Bank of Belleville. The representative of the Kansas Grain and Feed Association/Kansas Agribusiness Retailers Association indicated that the organizations were supportive of the discussion of how any moneys received under the Republican River Compact would be handled. The representative of the Kansas Farm Bureau was supportive of the bill, but made suggestions for amendments. The representative of the Kansas Cooperative Council also expressed support for the concept of the bill, but encouraged the Committee to include a portion of any moneys received to be credited to a water litigation fund. No opponents appeared before the Committee.

The Senate Committee on Agriculture amended the original bill by adopting a substitute bill. Those amendments

clarified the types of projects that could be funded by the moneys from Nebraska; clarified how the money in each fund may be expended; authorized that the first 5 percent of the money be credited to the Republican River Compact Compliance and Enforcement Fund; and created the Republican River Compact Compliance and Enforcement Fund.

The House Committee on Agriculture and Natural Resources amended the bill during the 2007 Session to:

- Require that moneys received in any settlement of litigation on the Republican River Compact be credited first to the Interstate Water Litigation Fund in an amount equal to that spent by the state and certified by the Attorney General;
- Require that the first 5 percent of moneys received after the Interstate Water Litigation Fund requirement is satisfied would be credited to the Republican River Compact Compliance and Enforcement Fund (RRCEF); and
- Require that remaining money be credited to the Republican River Water Conservation Projects Fund and allocated as follows:
 - One-third to the upper Republican River Basin in northwest Kansas primarily for projects relating to compliance with the Compact and secondarily for conservation projects, utilization efficiency, administrative projects and delivery projects, and
 - Two-thirds for conservation projects, utilization efficiency, administrative requirements and delivery projects in the lower Republican River Basin between the Kansas/Nebraska border and Milford Dam.

During the 2008 Legislative Session, the bill was referred to the House Agriculture and Natural Resources

Committee. The House Agriculture and Natural Resources Committee further amended the bill to:

- Create the Republican River Water Conservation Projects-Nebraska Moneys Fund and the Republican River Water Conservation Projects-Colorado Moneys Fund;
- Limit the moneys in the Interstate Water Litigation Fund to a \$20 million balance;
- Allocate the expenditure of remaining moneys in the two newly created funds; and
- Eliminate the provisions related to the Republican River Compliance and Enforcement Fund.

The fiscal note on the original bill states that the Kansas Water Office is unable to estimate the fiscal effect of SB 89, since it is not known whether Kansas will receive money from either Nebraska or Colorado as a result of violations of the Republican River Compact. The note also states that should Kansas receive any settlement amounts, the Kansas Water Office would anticipate either hiring 1.00 to 2.00 full-time FTE positions or using contractors to coordinate implementation of the water conservation projects. Without knowing the scope of the approved water conservation projects, the Kansas Water Office cannot estimate the staff needs at this time.

water litigation; republican river compact