

**Joint Committee on Energy & Environmental Policy**  
Water Litigation Status Update  
Assistant Attorney General Christopher M. Grunewald  
September 9, 2011

**Republican River – Kansas v. Nebraska & Colorado, No. 126 Original (U.S. Sup. Ct.)**

Mr. Chairman and members of the committee, thank you for allowing me to provide this status update on water litigation. The only current interstate water litigation is the recent lawsuit that Kansas brought against Nebraska because Nebraska took too much water from the Republican River, in violation of a 2003 settlement and the Republican River Compact.

The Compact allocates the waters of the Republican River Basin between Colorado, Kansas, and Nebraska. In 1998, Kansas sued Nebraska because Nebraska's excessive groundwater pumping was causing Compact violations and water shortages in Kansas. In 2000, the Supreme Court agreed with Kansas that excessive groundwater pumping that depletes stream flow is covered by the Compact. Eventually all three states entered a settlement known as the Final Settlement Stipulation. The Court entered a decree approving the settlement in 2003.

The Final Settlement Stipulation created tests to measure Compact compliance. The tests use multi-year averages to measure each State's allocation and consumption. In the first few years following the settlement, Nebraska failed these tests by consuming too much water, once again because of excessive groundwater pumping. Kansas raised the first set of violations with Nebraska and then, as required by the settlement, took the issues through non-binding arbitration. Nebraska also triggered arbitration seeking to force Kansas and Colorado to adopt changes to the water accounting methods used to determine Compact compliance. The arbitration concluded in 2009, and failed to resolve the disputes. In May 2010, Kansas filed a petition with U.S. Supreme Court asking for remedies for Nebraska's violations. In particular, Kansas is seeking an order requiring Nebraska to reduce its groundwater pumping or otherwise ensure compliance during dry periods; an award of the greater of Kansas' economic losses or Nebraska's economic gains from the overuse; pre-set sanctions for future violations; as well as other relief.

**Recent Activity:**

- April 4, 2011 – Court grants Kansas' petition and appoints lawyer William Kayatta as Special Master to function as the trial judge.
- May 2011 – Nebraska asks to raise its claim seeking changes to the water accounting.
- June 2011 – Document discovery begins, currently underway.
- July 18, 2011 – Status conference in Kansas City, MO; Special Master rules that Nebraska may raise accounting procedure claim.

**Upcoming major activities and deadlines:**

- October 2011 – depositions begin
- November 15, 2011 – initial expert reports due (both Kansas and Nebraska)
- March 16, 2012 – responsive expert reports (all States)
- Summer 2012 – trial expected