

# [***ARTICLE:THE ARKANSAS RIVER COMPACT***](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:459P-SCV0-00SW-5051-00000-00&context=1516831)

Fall, 2001

**Reporter**

5 U. Denv. Water L. Rev. 58 \*

**Length:** 25153 words

**Author:** DAVID W. ROBBINS, DENNIS M. MONTGOMERY+

+ David W. Robbins and Dennis M. Montgomery are officers and shareholders with the firm of Hill & Robbins, P.C., Denver, ***Colorado***. Mr. Robbins and Mr. Montgomery are Special Assistant Attorneys General for ***Colorado*** in Kansas v. ***Colorado***, No. 105, Original. The authors wish to thank Jennifer H. Hunt for her invaluable assistance in preparing this article.

**Text**

**[\*59]**

[*I*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1516831). INTRODUCTION

The Arkansas ***River*** Compact [[1]](#footnote-2)1 ("Compact") is the both best compact that ***Colorado*** has entered into and, paradoxically, the worst compact that ***Colorado*** has entered into. [[2]](#footnote-3)2 It is the best compact because it apportions the benefits arising from the construction of John Martin Reservoir, a large federally built on-stream reservoir, without placing any restriction on diversions by existing water users in ***Colorado*** (except for a limitation on the improved or prolonged functioning of existing works). The Compact is also the best for ***Colorado*** because it does not preclude or place a specific limit on future development in the Arkansas ***River*** Basin in ***Colorado***. It is the worst compact, at least from the standpoint of the state officials charged with the enforcement of its provisions, [[3]](#footnote-4)3 because it provides no quantitative standard to determine whether future developments, including improved or prolonged functioning of existing works, are in compliance with the Compact.

The Compact arose out of a long dispute between ***Colorado*** and Kansas over the use of the waters of the Arkansas ***River***. This article examines the key provisions of the Compact and the circumstances that led to its unique apportionment in an attempt to answer this question: Why did ***Colorado*** and Kansas agree to an apportionment of the Arkansas ***River*** that did not apportion its waters on the basis of beneficial consumptive use and did not impose a delivery obligation on ***Colorado***?

**[\*60]**

[*II*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T352-D6RV-H379-00000-00&context=1516831). THE ARKANSAS ***RIVER*** BASIN

The Arkansas ***River*** originates on the eastern slope of the Rocky Mountains above Leadville, ***Colorado***, just east of the Continental Divide. [[4]](#footnote-5)4 The ***river*** flows through the mountains until it emerges into the foothills region near Canon City. [[5]](#footnote-6)5 It then flows through a narrow valley until it reaches the city of Pueblo, where it leaves the foothills and meanders across the High Plains into Kansas. [[6]](#footnote-7)6

The Arkansas ***River*** Valley between Pueblo, ***Colorado***, and Garden City, Kansas, is semiarid. [[7]](#footnote-8)7 Rainfall averages less than twelve inches per year at Pueblo, and gradually increases to an average of slightly more than eighteen inches per year at Garden City. [[8]](#footnote-9)8 The valley is a fertile agricultural area, but the water supply available from the Arkansas ***River*** is not adequate to irrigate all of the lands along the ***river*** in ***Colorado*** and western Kansas. The Arkansas ***River*** is subject to wide fluctuations in flow, not only from year to year, but also from season to season and day to day. [[9]](#footnote-10)9

Runoff from mountainous areas above Canon City is more uniform from year to year and fluctuates less than runoff from plains and foothills drainage areas. [[10]](#footnote-11)10 As a result, mountain runoff provides a more stable source of supply, well suited for irrigation needs in ***Colorado***. [[11]](#footnote-12)11 The flow of the ***river*** at Canon City, excluding transmountain imports, averaged 499,200 acre-feet per year from 1908 to 1984, [[12]](#footnote-13)12 ranging from 217,200 acre-feet in 1940 to 896,600 acre-feet **[\*61]** in 1957. [[13]](#footnote-14)13 In contrast, the Purgatoire ***River***, the largest tributary of the Arkansas ***River***, flows at a lesser rate, averaging 61,659 acre-feet per year from 1950 to 1985, [[14]](#footnote-15)14 and varying from 4,571 acre-feet in 1975 to 271,256 acre-feet in 1965. [[15]](#footnote-16)15

According to a report by the U.S. Bureau of Reclamation ("Bureau"), more than 60 percent of the average annual mainstem runoff in ***Colorado*** occurs between the months of April and July. [[16]](#footnote-17)16 Lands under a majority of the canals experience moderate to severe shortages of surface water after June, when the snowmelt is generally gone. [[17]](#footnote-18)17

The area north of the Arkansas ***River*** and east of Pueblo is characterized by broad rolling plains. [[18]](#footnote-19)18 Major tributaries from the north are Fountain, Adobe, Horse, and Big Sandy Creeks. [[19]](#footnote-20)19 Except for Fountain Creek, these streams are mostly intermittent and do not provide a dependable supply to ditches on the Arkansas ***River***. [[20]](#footnote-21)20 The area south of the Arkansas ***River*** consists of larger drainage systems, of which the Purgatoire ***River*** is the most significant. [[21]](#footnote-22)21 Other major tributaries from the south include the St. Charles, the Huerfano, and the Apishapa ***Rivers***. [[22]](#footnote-23)22 These streams have an intermittent flow derived primarily from intense rainstorms during the summer. [[23]](#footnote-24)23

Tributary inflow provides a portion of the water supply to ditches on the Arkansas ***River***, [[24]](#footnote-25)24 but, the flows reaching the mainstem of the ***river*** fluctuate widely and are significant only during peak runoff periods. [[25]](#footnote-26)25 Most of the flood flow above John Martin Reservoir is now captured in reservoirs in ***Colorado***, but tributaries below John Martin are mostly unregulated. [[26]](#footnote-27)26

**[\*62]** From 1908 to 1942, prior to the construction of John Martin Reservoir, Stateline [[27]](#footnote-28)27 flows averaged 280,800 acre-feet per year, which varied from 30,900 acre-feet in 1940, to 1,342,400 acre-feet in 1942. [[28]](#footnote-29)28 The operation of John Martin Reservoir under the Compact was expected to reduce total Stateline flows by storing unused flood and winter flows. [[29]](#footnote-30)29 After the Compact became effective, Stateline flows averaged 144,051 acre-feet per year from 1950 to 1985. [[30]](#footnote-31)30 After adoption of the Compact, it was probable that substantial amounts of unused water would pass Garden City each year. This water would be available for future development in the basin. For example, shortly after the Compact became effective, the Bureau estimated that there were 48,200 acre-feet per year available for storage in excess of the requirements of ditches in ***Colorado*** and Kansas, at rates limited to 200 cubic feet per second ("c.f.s.") or less. [[31]](#footnote-32)31

[*III*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T372-8T6X-731R-00000-00&context=1516831). HISTORY OF IRRIGATION IN THE ARKANSAS ***RIVER*** BASIN

A. Irrigation in ***Colorado***

Shortly after the Pike's Peak gold rush in 1859, irrigation began in the Arkansas ***River*** Basin in ***Colorado***. [[32]](#footnote-33)32 However, large scale irrigation did not begin until 1874, near Rocky Ford. [[33]](#footnote-34)33 Some of the water diverted for irrigation returned to the ***river*** from canal seepage and applied irrigation water. [[34]](#footnote-35)34 These return flows provided water for diversion later in the season by ditches downstream. [[35]](#footnote-36)35

The major irrigation systems in the Arkansas ***River*** Valley in ***Colorado*** were developed primarily during the 1880s. [[36]](#footnote-37)36 From Pueblo to the ***Colorado***-Kansas Stateline, twenty active ditch systems divert water from the Arkansas ***River***. [[37]](#footnote-38)37 These range in size from the Collier Ditch, which is about two miles long and irrigates approximately 600 acres in Pueblo County, to the Fort Lyon Canal, which is more than 100 miles long and delivers water to more than 90,000 acres on the **[\*63]** north side of the ***river*** from La Junta to Lamar. [[38]](#footnote-39)38

By 1910, a complex system of private irrigation ditches and reservoirs existed in ***Colorado***, and irrigated approximately 330,000 acres between Pueblo and the Stateline. [[39]](#footnote-40)39 The ***river*** supply was inadequate to irrigate this acreage, so by 1935, seven projects had been constructed to import water, mostly from the ***Colorado*** ***River*** Basin, into the Arkansas ***River*** Basin. [[40]](#footnote-41)40 These water imports are commonly referred to as "transmountain diversions." When the Compact was negotiated, transmountain diversions averaged approximately 43,000 acre-feet per year. [[41]](#footnote-42)41 Upon the completion of the Fryingpan-Arkansas Project, a federal water project authorized by Congress in 1962, the Bureau estimated that total diversions from the ***Colorado*** ***River*** Basin into the Arkansas ***River*** Basin would average 196,000 acre-feet annually, which is approximately 38 percent of the average annual Arkansas ***River*** flow at Pueblo. [[42]](#footnote-43)42

Irrigators in the Arkansas ***River*** Valley in ***Colorado*** have also used groundwater for many years, primarily to supplement surface supplies. [[43]](#footnote-44)43 According to a 1990 study prepared for ***Colorado***, [[44]](#footnote-45)44 there are 717 large capacity (100 gallons per minute or greater) irrigation wells in ***Colorado*** along the mainstem of the ***river*** with appropriation dates earlier than 1950. [[45]](#footnote-46)45 The same study found that in 1985 there were 2,062 large capacity irrigation wells along the mainstem in ***Colorado***, although not all of these well were active. [[46]](#footnote-47)46

B. Irrigation in Kansas

Irrigation from the Arkansas ***River*** in western Kansas began in 1879. [[47]](#footnote-48)47 Irrigated acreage steadily increased from approximately 15,000 acres in 1895, to 56,000 acres in 1939. [[48]](#footnote-49)48 Irrigated acreage in western Kansas had increased to about 66,000 acres when Congress considered **[\*64]** the Compact for approval in 1949. [[49]](#footnote-50)49 The ditches in Kansas affected by the Compact are located in Hamilton, Kearny, and Finney Counties, and divert water from the Arkansas ***River*** upstream from Garden City, Kansas. [[50]](#footnote-51)50 Two of the ditches in Kansas (the Alamo and Fort Aubrey Ditches) no longer operate, although wells continue to irrigate the lands they formerly served. [[51]](#footnote-52)51

Groundwater use for irrigation in Kansas dates back to about 1890 when irrigators first used windmill powered pumps. [[52]](#footnote-53)52 By the late 1930s, many farmers in Kansas supplemented diversions from the ***river*** with irrigation wells, while others used wells exclusively. [[53]](#footnote-54)53 In 1962, the Bureau surveyed the irrigation practices under the eight ditches in Kansas and found that the land irrigated in the area had increased to an estimated 75,800 acres. [[54]](#footnote-55)54 Of this acreage, 71 percent (53,839 acres) used both surface and groundwater, 17 percent (12,846 acres) used groundwater only, and 12 percent (9,110 acres) used surface water only. [[55]](#footnote-56)55

C. John Martin Reservoir

The John Martin Reservoir project (originally known as the Caddoa Reservoir Project) was authorized for construction by the U.S. Army Corps of Engineers ("Corps") in 1936 to provide flood control and water conservation in ***Colorado*** and Kansas. [[56]](#footnote-57)56 One factor in project authorization was the potential usefulness of the reservoir in facilitating settlement of the long standing controversy between ***Colorado*** and Kansas. [[57]](#footnote-58)57 General Kramer [[58]](#footnote-59)58 described the salient **[\*65]** features of the project in his report to Congress on the proposed Compact:

This project, located on the main stem of the Arkansas ***River*** near Caddoa, ***Colo.***, about 58 miles upstream from the ***Colorado***-Kansas State line, was authorized for construction by the Corps of Engineers in the Flood Control Act of June 22, 1936… .

Construction of the John Martin Reservoir project was initiated in 1939, suspended during the war years, and substantially completed in 1948. The resulting reservoir has a total storage capacity of approximately 700,000 acre-feet of which the upper 280,000 acre-feet (above elevation 3851) has been initially allocated to flood control, and the lower 420,000 acre-feet (below elevation 3851) have been initially allocated to water conservation… .

By the fact of its existence, the John Martin Reservoir project, though not affecting the equities of apportionment of water between ***Colorado*** and Kansas, actually constitutes the key structure in the implementation of any plan of apportionment. [[59]](#footnote-60)59

In 1933, both states signed a stipulation in the pending case of ***Colorado*** v. Kansas [[60]](#footnote-61)60 agreeing that the reservoir construction and operation would "not "disturb the status quo of the diversion of water for beneficial uses from said Arkansas ***River*** by the ditches and canals'" then operating in ***Colorado*** and Kansas. [[61]](#footnote-62)61 The 1933 stipulation was only effective pending the outcome of ***Colorado*** v. Kansas. Although ***Colorado*** sought an apportionment of water stored in John Martin Reservoir in ***Colorado*** v. Kansas, the Supreme Court declined to make such an apportionment. Thus, allocation of the benefits arising from construction of John Martin Reservoir was left to the commissioners who drafted the Compact. [[62]](#footnote-63)62

[*IV*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T3H2-D6RV-H37G-00000-00&context=1516831). THE ARKANSAS ***RIVER*** COMPACT

In December 1948, after three years of negotiations, commissioners for ***Colorado*** and Kansas signed the Arkansas ***River*** Compact, which became effective on May 31, 1949, after ratification by the legislature of each state and consent of Congress. [[63]](#footnote-64)63

The Compact did not apportion the waters of the Arkansas ***River*** between ***Colorado*** and Kansas on the basis of beneficial consumptive use or a delivery obligation, as in many other interstate compacts. [[64]](#footnote-65)64 **[\*66]** Instead, it provided a flexible apportionment based on the right of both states to make demands for releases from John Martin Reservoir at the times and the rates specified in the Compact. Notably, releases of stored water and ***river*** flow to ***Colorado*** and Kansas are measured at different points. Releases made upon demand by ***Colorado*** are measured at John Martin Reservoir Dam; therefore, conveyance losses between the dam and the points of diversion reduce the releases to water users in ***Colorado***. Releases made upon demand by Kansas are satisfied by "an equivalent in Stateline flow," which means that all accretions and return flows at the Stateline are included in determining releases to Kansas.

"The general principle of this Compact," as stated by the ***Colorado*** Commissioners,

Is the division of the benefits of the reservoir storage on the basis of the maximum rates of flow, 750 c.f.s. (cubic feet per second) or 60% to ***Colorado*** and 500 c.f.s. or 40% to Kansas, out of available storage water in the Reservoir, with ***Colorado*** having the substantial advantage of using all accretions and return flow at the State line to make up Kansas' 40% share at the state line. [[65]](#footnote-66)65

This is not a fixed ratio for stored water division, however, as the ***Colorado*** Commissioners made clear in their report on the Compact:

In other words, if Kansas called for 500 c.f.s. of release of stored water and there was 250 c.f.s. of other water crossing the State line, then only a sufficient flow necessary to develop a flow of 500 c.f.s. need be released from the Reservoir. Thus, if each State continued to call for their maximum releases at the same time, ***Colorado*** would always have the advantage of such return flow and accretions at the State line, which would result in the actual division of the water in the Reservoir being much more than 60% to ***Colorado*** and much less than 40% to Kansas. [[66]](#footnote-67)66

In addition to the apportionment of the benefits arising from John Martin Reservoir, the Compact was not intended to impede or prevent future beneficial development of the Arkansas ***River*** Basin in either State, "provided, that the waters of the Arkansas ***River***, as defined in article III, shall not be materially depleted in usable quantity or availability for use to the water users in ***Colorado*** and Kansas under this Compact by such future development or construction." [[67]](#footnote-68)67

From the foregoing description of the Compact, the question posed at the outset of this article naturally arises: Why did ***Colorado*** and Kansas agree to the unique apportionment in the Compact, which **[\*67]** does not apportion beneficial consumptive use of the water supply of the Arkansas ***River*** to ***Colorado*** and Kansas and does not impose a delivery obligation on ***Colorado***? [[68]](#footnote-69)68 The answer to that question lies in the background to the Compact.

Kansas and ***Colorado*** negotiated the Arkansas ***River*** Compact after a long dispute over the use of waters of the Arkansas ***River*** beginning with Kansas v. ***Colorado***, decided in 1907, [[69]](#footnote-70)69 and culminating in the 1943 decision of ***Colorado*** v. Kansas. [[70]](#footnote-71)70 Kansas filed suit against ***Colorado*** in 1901, alleging that ***Colorado*** and various ***Colorado*** corporations unlawfully appropriated waters from the Arkansas that should have flowed across the Stateline for the benefit of riparian landowners in Kansas. [[71]](#footnote-72)71 ***Colorado*** answered that the Arkansas ***River*** was, in essence, two ***rivers*** separated by a dry sandy stretch of land in western Kansas. [[72]](#footnote-73)72 Further, the state claimed that its water users appropriated only the ***Colorado*** portion of the Arkansas ***River***. [[73]](#footnote-74)73 ***Colorado*** additionally argued that, as a practical matter, its diversions from the Arkansas did not injure the water users of Kansas. [[74]](#footnote-75)74

The Supreme Court rejected ***Colorado***'s "broken ***river***" argument and agreed with Kansas' contention that the diminution of the flow of the Arkansas ***River*** by ***Colorado*** irrigation practices resulted in some injury to Kansas. [[75]](#footnote-76)75 However, it ultimately found that the small amount of injury was far outweighed by "the great benefit which has obviously resulted to the counties in ***Colorado***," and that the "equality of right and equity between the two states forbids any interference with the present withdrawal of water in ***Colorado*** for purposes of irrigation." [[76]](#footnote-77)76 Therefore, the Court determined that Kansas was not entitled to a decree apportioning the waters of the ***river***, but that:

If the depletion of the waters of the ***river*** by ***Colorado*** continued **[\*68]** to increase there will come a time when Kansas may justly say that there is no longer an equitable division of benefits and may rightfully call for relief against the action of ***Colorado***, its corporations and citizens in appropriating the waters of the Arkansas for irrigation purposes. [[77]](#footnote-78)77

Kansas later claimed that diversions and appropriations in ***Colorado*** had increased, and subsequently sought an apportionment of the flows of the Arkansas ***River***. The Supreme Court again denied the request for an apportionment in Kansas v. ***Colorado***, discussed below. As Jean Breitenstein [[78]](#footnote-79)78 noted:

The decisions of the United States Supreme Court in the two cases involving Kansas and ***Colorado*** did not make any definite apportionment of water between the two States. The action of the Court in denying the Kansas claims can be taken as a determination by the Court that the uses made by ***Colorado*** and presented to the Court did not represent an excess use and, hence, ***Colorado*** was entitled as a minimum to the amount of water covered by such uses. In the second case, the Court gave no consideration to a division of the benefit resulting from the construction of the John Martin Dam and Reservoir and very strongly suggested that the only proper way to determine the interstate difficulties was by the compact method. Accordingly, in 1945 Compact negotiations began. [[79]](#footnote-80)79

The Arkansas ***River*** Compact consists of nine separate articles. [[80]](#footnote-81)80 As a preliminary matter, note that the Compact deals only with the waters of the Arkansas ***River***, [[81]](#footnote-82)81 which are defined in Article III as "waters originating in the natural drainage basin of the Arkansas ***River***, including its tributaries, upstream from the Stateline, and excluding **[\*69]** waters brought into the Arkansas ***River*** Basin from other ***river*** basins." [[82]](#footnote-83)82 As General Kramer stated in his report to Congress on the proposed Compact:

Natural stream flow in the headwaters of the Arkansas ***River*** is augmented by water imported through transmountain diversions across the Continental Divide from the ***Colorado*** ***River*** system. These importations, which have been in operation since before 1908 and have been averaging approximately 43,000 acre-feet in recent years, have been developed by private water users… .

***Colorado***'s importations of water from the ***Colorado*** to the Arkansas ***River*** system may be increased materially above historic quantities if and when plans for the multiple-purpose Gunnison-Arkansas transmountain diversion project [later renamed the Fryingpan-Arkansas Project], which are now being drafted by the Bureau of Reclamation, reach fruition. Under the restrictions of the ***Colorado*** ***River*** compact (to which ***Colorado*** is, but Kansas is not, a signatory) such diversions from the ***Colorado*** ***River*** Basin must be put to use within the confines of the State of ***Colorado*** and are not available for exportation to Kansas. Accordingly, as in the case of historic importations, the proposed compact does not concern itself with any prospective importations inasmuch as they would likewise be foreign waters in which the State of Kansas would have no legitimate interest. (Emphasis added). [[83]](#footnote-84)83

The fact that the Compact has intrastate as well as interstate aspects is also important to understanding it. The construction of a large on-stream reservoir on the Arkansas ***River*** had the potential for obvious benefit to water users in ***Colorado*** and Kansas downstream from the reservoir by storing flood waters and regulating existing supplies. But, water users in ***Colorado*** upstream from the reservoir also felt they were entitled to benefit from the federal project. As ***Colorado*** Commissioner Henry C. Vidal stated to Congress, "the negotiations have been most prolonged due to the fact that we were obliged in a sense to make two compacts, a compact with Kansas and a compact among our own water interests in ***Colorado***." [[84]](#footnote-85)84

Under the Compact, the conservation pool in John Martin Reservoir functions as a benefit to water users in ***Colorado***, both upstream and downstream from John Martin Dam. [[85]](#footnote-86)85 Physically, water **[\*70]** cannot be released from John Martin Reservoir to water users upstream from the dam. The conservation pool benefits upstream users by removing priority "calls" on such water users when there is water stored in the conservation pool of the reservoir. As ***Colorado*** Commissioner Gail L. Ireland stated in his testimony to Congress:

Mr. Vidal emphasized the fact that we had a great deal of difficulty in our own State because of the fact this reservoir was so located that it radically changed the position in many ways of users above the reservoir and below the reservoir. We feel that we have equitably ironed that out by providing that when there is water in the reservoir the users above the reservoir, who up to this time have had to operate strictly according to decrees and according to priorities, may have the advantage of disregarding senior rights below, because those users below, having the senior rights, now have the benefit of a controlled storage, which is much more efficient and valuable. [[86]](#footnote-87)86

This paper will first focus on three articles of the Compact central to the apportionment of the waters of the Arkansas ***River*** made to each State: Articles I, II, and V. It will then discuss the provisions of Article IV(D), which addresses future development.

A. Article I: Purposes of the Compact

Article I of the Compact states that the major purposes of the Compact are to:

A. Settle existing disputes and remove causes of future controversy between the States of ***Colorado*** and Kansas, and between citizens of one and citizens of the other State, concerning the waters of the Arkansas ***River*** and their control, conservation and utilization for irrigation and other beneficial purposes.

B. Equitably divide and apportion between the States of ***Colorado*** and Kansas the waters of the Arkansas ***River*** and their utilization as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin Reservoir Project for water conservation purposes. [[87]](#footnote-88)87

This statement of purposes is similar to declarations in other interstate water compacts. [[88]](#footnote-89)88 The drafters substantially completed **[\*71]** Article I before full development of the apportionment in Article V of the Compact; [[89]](#footnote-90)89 therefore, it is not surprising that this Article is not particularly revealing about the specific apportionment made to each state under the Compact.

B. Article II: Factors on which the Compact is Based

Article II of the Compact states that the provisions of the Compact are based on three factors:

(1) The physical and other conditions peculiar to the Arkansas ***River*** and its natural drainage basin, and the nature and location of irrigation and other developments and facilities in connection therewith; (2) the opinion of the United States Supreme Court entered December 6, 1943, in the case of [***Colorado*** *v. Kansas (320 U.S. 383)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) concerning the relative rights of the respective States in and to the use of waters of the Arkansas ***River***; and (3) the experience derived under various interim executive agreements between the two states apportioning the waters released from the John Martin Reservoir as operated by the Corps of Engineers. [[90]](#footnote-91)90

1. Physical and Other Conditions Peculiar to the Arkansas ***River*** Basin and the Nature and Location of Irrigated Areas

The first factor on which the Compact provisions are based is the physical conditions peculiar to the Arkansas ***River***, including the erratic nature of the flow of the ***river***, which varies from year to year, season to season, and day to day. [[91]](#footnote-92)91 As stated by the Supreme Court, "the main ***river*** below Canon City may be almost without water one day, run a flood the next day, and, on the following day, be in practically its original condition." [[92]](#footnote-93)92 In addition, the Arkansas ***River*** above Garden City, Kansas, contributes little to its flow in southeastern Kansas. As General Kramer stated in his report to Congress:

The peculiar physiography of the Arkansas ***River*** Basin in western Kansas prevents that reach of the ***river*** from receiving any tributary inflow of consequence and from contributing materially to the flow of the lower ***river*** through southeastern Kansas, Oklahoma, and Arkansas. In effect, therefore, the Arkansas ***River*** of western Kansas may be considered as a minor tributary of the lower ***river***. [[93]](#footnote-94)93

**[\*72]** In ***Colorado***, the Arkansas ***River*** is "over-appropriated"; during normal or low flows, many water rights are "out-of-priority" and do not receive water. [[94]](#footnote-95)94 Robert W. Jesse, former Division Engineer for Water Division No. 2 in ***Colorado*** gives an ironic description of the Arkansas ***River***:

"Usually, the last people to get water have rights that were established somewhere in the mid-1880's," says Jesse. "Once in a while, the call doesn't even get past 1874. What you're dealing with here is a semi-desert. We generally have a long string of dry years followed by a serious drought." [[95]](#footnote-96)95

2. The Opinion in ***Colorado*** v. Kansas

The Compact provisions are also based on the opinion the Supreme Court in ***Colorado*** v. Kansas [[96]](#footnote-97)96 concerning the relative rights of the respective states in and to the use of the Arkansas ***River***. It is therefore helpful to review that opinion to understand the Compact.

In its answer in ***Colorado*** v. Kansas, Kansas asserted that ***Colorado*** users had "largely increased their appropriations and diversions [since the judgment in Kansas v. ***Colorado***, [[97]](#footnote-98)97] and threaten[ed to further] increase them, to the injury of Kansas users." [[98]](#footnote-99)98 Kansas requested:

That the rights of her citizens and residents to divert water from the ***river*** for irrigation be decreed in second feet and that ***Colorado***, her officers, agents, and citizens be perpetually enjoined from diverting any waters from the ***river*** or its tributaries in ***Colorado*** until the rights of Kansas, her citizens and residents, are satisfied. [[99]](#footnote-100)99

The Special Master who was appointed by the Supreme Court recommended a decree that the ""average annual dependable and fairly continuous water supply and flow'" be allocated five-sixths to ***Colorado*** and one-sixth to Kansas. [[100]](#footnote-101)100 The proposed decree required measurement of flow at stream flow gages at Canon City, and at the **[\*73]** mouth of the Purgatoire ***River***, and "deliveries to Kansas prorated to the total of the flows at those points." [[101]](#footnote-102)101

After reviewing the evidence, the Supreme Court concluded, "The prayer of Kansas for an apportionment in second feet or acre feet cannot be granted." [[102]](#footnote-103)102 The Court noted that in its earlier decision, it had ruled that Kansas was not entitled to a specific share of the waters. [[103]](#footnote-104)103 There had been no appearance that ***Colorado*** had appropriated more than her equitable share of the flow. [[104]](#footnote-105)104 In order to obtain relief, Kansas had to show "additional takings working serious injuries to her substantial interests." [[105]](#footnote-106)105 The Court then stated:

The reason for judicial caution in adjudicating the relative rights of States in such cases is that, while we have jurisdiction of such disputes, they involve the interests of quasi-sovereigns, present complicated and delicate questions, and, due to the possibility of future change of conditions, necessitate expert administration rather than judicial imposition of a hard and fast rule. Such controversies may appropriately be composed by negotiation and agreement, pursuant to the compact clause of the federal Constitution. We say of this case, as the court has said of interstate differences of like nature, that such mutual accommodation and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power. [[106]](#footnote-107)106

The Court determined that the Master erred when he attempted to divide the "average annual dependable" Arkansas ***River*** water supply in ***Colorado*** and award those amounts to each state respectively. [[107]](#footnote-108)107 "Such a controversy as is here presented is not to be determined as if it were one between two private riparian proprietors or appropriators." [[108]](#footnote-109)108

In approaching the "vital" question of whether Kansas made a legitimate claim that "***Colorado*** has, since our prior decision, increased depletion of the water supply to the material damage of Kansas' substantial interests," [[109]](#footnote-110)109 the Court stated, "the question must be answered in the light of the rules of decision appropriate to the quality of the parties and the nature of the suit." [[110]](#footnote-111)110 The Court's description of those rules of decision went as follows:

In such disputes as this, the court is conscious of the great and serious caution with which it is necessary to approach the inquiry whether a case is proved. Not every matter which would warrant resort to equity **[\*74]** by one citizen against another would justify our interference with the action of a State, for the burden on the complaining State is much greater than that generally required to be borne by private parties. Before the court will intervene the case must be of serious magnitude and fully and clearly proved. And in determining whether one State is using, or threatening to use, more than its equitable share of the benefits of a stream, all the factors which create equities in favor of one State or the other must be weighed as of the date when the controversy is mooted. [[111]](#footnote-112)111

On the record before it, the Court held that a decree such as the Master recommended doubtlessly "would inflict serious damage on existing agricultural interests in ***Colorado***." [[112]](#footnote-113)112 The Court noted that the proposed decree would operate to deprive some citizens in ***Colorado***, to a certain extent, of their means of support, and might result in citizens abandoning valuable improvements and migrating from farms. [[113]](#footnote-114)113 Citing the steady growth of ***Colorado***'s irrigated agriculture in the basin during the preceding fifty years, in addition to the accompanying investment in canals, reservoirs, and farms, the Court noted "the progress has been open. The facts were of common knowledge." [[114]](#footnote-115)114 It further pointed out that "even if Kansas' claims of increased depletion and ensuing damage are taken at face value, it is nevertheless evident that while improvements based upon irrigation went forward in ***Colorado*** for twenty-one years, Kansas took no action until ***Colorado*** filed the instant complaint in 1928." [[115]](#footnote-116)115 The court continued, "these facts might well preclude the award of the relief Kansas asks. But, in any event, they gravely add to the burden she would otherwise bear, and must be weighed in estimating the equities of the case." [[116]](#footnote-117)116

Subsequently, the Court found the Master's report inadequate to answer the "vital" question in the case, stating:

The Master concludes that there has been a material increase in depletion by ***Colorado***, a consequent diminution of flow across the state line, and injury to the substantial interests of Kansas. His report does not state what he considers material; or the extent of the diminution of flow; or the interests of Kansas which have been injured and the extent of the injury. We must, therefore, turn to the **[\*75]** evidence to resolve the issues. [[117]](#footnote-118)117

The Court began its own review of the evidence by first addressing Kansas' claim regarding ***Colorado***'s alleged increase in its consumptive use of the water of the Arkansas ***River*** by an average of between 300,000 and 400,000 acre-feet annually. [[118]](#footnote-119)118 Based on its review, the Court concluded that "the records of ***Colorado***'s consumption and ditch diversions, and the ***Colorado*** and Kansas exhibits showing the divertible and usable state line flow, rebut such an increase as Kansas asserts." [[119]](#footnote-120)119 The Court pointed out that Kansas' expert witness testified that the diversion records showed no material change since 1905, and that if irrigated acreage on the main stem of the ***river*** actually increased in ***Colorado***, "it had done so because of an improved duty of water." [[120]](#footnote-121)120

Kansas ditches, the Court noted, were capable of diverting water "only up to 2,000 c.f.s.," and when the water exceeded that amount, "the excess [could not] be diverted and used." [[121]](#footnote-122)121 Also, the erratic nature of the water supply brought up the "critical matter" of "the amount of divertible flow at times when water is most needed for irrigation." [[122]](#footnote-123)122 The Court pointed out that the extensive use of reservoirs for storage of flood waters and winter flows not usable or needed for irrigation, historically supplemented the dependable supply of irrigation water in ***Colorado***. In contrast, Kansas could point to "but one small basin" in the western part of that state constructed for that purpose. [[123]](#footnote-124)123 The Court noted that releasing this storage water to help ***Colorado*** irrigators in times of need resulted in stabilization and improvement of flow at the Stateline through increased seepage and return flow. [[124]](#footnote-125)124

Reviewing the evidence of increased acreage in ***Colorado***, the Court concluded that while, according to census figures, irrigated acreage in ***Colorado*** had increased substantially between 1902 and 1909, there had been only a minor increase thereafter. [[125]](#footnote-126)125 Turning to the evidence of irrigated acreage in Kansas, it further noted a steady increase in irrigated acreage in Kansas, and concluded that "it seems that ***Colorado*** cannot have depleted the usable supply passing into Kansas if acreage under irrigation is any measure of depletion." [[126]](#footnote-127)126

Next, the Court reviewed the findings in the earlier case and the fact that ***Colorado*** had previously authorized diversions in excess of **[\*76]** the flow at Canon City. However, the Court noted that due to seepage and return flow, "an increased quantity of usable water has passed the state line." [[127]](#footnote-128)127 While noting Kansas' insistence that it could successfully irrigate 414,000 acres in western areas of the state, the Court pointed out that this land extended many miles from the bed of the ***river***, and that despite ***Colorado***'s alleged increased depletions, "the acreage under irrigation in western Kansas through existing ditches has steadily increased, over the period 1895-1939, from approximately 15,000 acres to approximately 56,000." [[128]](#footnote-129)128 And, the Court noted:

The arid lands in western Kansas are underlaid at shallow depths with great quantities of ground water available for irrigation by pumping at low initial and maintenance cost. There is persuasive testimony that farmers who could be served from existing ditches have elected not to take water therefrom but to install pumping systems because of lower cost. [[129]](#footnote-130)129

Finally, the Court noted that the census figures of population in western Kansas counties, and the agricultural production within them, "give no support to a claim that the inhabitants have suffered for lack of arable and productive land." [[130]](#footnote-131)130 Generally speaking, the population had increased steadily, paralleling agricultural production. [[131]](#footnote-132)131 Considering all these factors, the Court concluded that Kansas had not sustained its allegations that ***Colorado***'s use had materially increased, or that the increase had resulted serious detriment to the substantial interests of Kansas. [[132]](#footnote-133)132

3. Interim Executive Agreements

The experience derived from interim executive agreements between the two states apportioning water stored in John Martin Reservoir is the third factor on which the provisions of the Compact are based. [[133]](#footnote-134)133 As General Kramer stated in his report to Congress, the project was "the most important structure affecting the formulation and future administration of the proposed compact..." [[134]](#footnote-135)134 He described the interim agreements governing storage prior to adoption of the Compact:

In the intervening years, 1943-47, the John Martin (Caddoa) project … reached a stage of partial completion which permitted the storage of water for irrigation use up to a volume of 100,000 acre-feet. **[\*77]** Impoundment and release of this water was governed by various interim operating agreements between State officials. The first of these interim agreements (1943) adopted the formula for allocation specified in the Stipulation of 1933 [in which both States had agreed to use their influence to obtain the construction of the Caddoa project and specified an allocation pending the outcome of the Supreme Court suit in ***Colorado*** v. Kansas]; other formulas were adopted in subsequent years. Though none of these interim arrangements brought complete satisfaction, they were reasonably satisfactory in enabling beneficial use of limited reservoir storage during the years of war and postwar emergency. They also served a good purpose in highlighting the administrative difficulties to be solved in a permanent compact. In the final analysis, experience with the various interim operating agreements developed clearly that differences of interpretation or lack of agreement among the State officials, or among the water users, ultimately brought the problem into the lap of the Corps of Engineers whose district engineer is charged with the responsibility of actual operation of the John Martin project. [[135]](#footnote-136)135

General Kramer noted that in 1943 the Army Corps operated John Martin Reservoir based on the Stipulation of 1933, which was intended to maintain the status quo of existing ditch and canal diversions pending a decision by the Supreme Court. [[136]](#footnote-137)136 Implementation of the stipulation resulted in heated disputes over accounting for water. [[137]](#footnote-138)137

In February 1944, shortly after the opinion in ***Colorado*** v. Kansas, Charles L. Patterson, Chief Engineer of the ***Colorado*** Water Conservation Board, developed a plan for the operation of John Martin Reservoir and for administration of ***Colorado*** water rights. [[138]](#footnote-139)138 In the report, Patterson reviewed the benefits and the complications of storing undivertible flood flows and unusable winter flows in the reservoir:

Waters impounded in the irrigation pool will consist of flows of the Arkansas and Purgatoire ***Rivers*** that are undivertible and unusable by upstream appropriators, but which, with respect to downstream interests, will consist, in part, of appropriated supplies, or flows which if not withheld would or might have been diverted and used by ditches downstream in ***Colorado*** and Kansas; and, in part, of unappropriated waters which, if not withheld, would or might have been unused and wasted, wholly or partially. [[139]](#footnote-140)139

Patterson noted that segregation of waters impounded in the irrigation pool would require "arbitrary assumptions and large measures of estimation, and would inevitably become sources of local **[\*78]** and interstate controversy, and of possible future litigation." [[140]](#footnote-141)140 He also pointed out that siltation and evaporation would further complicate accounting with respect to stored water. [[141]](#footnote-142)141 At times when the reservoir held impounded water, the regimen of the downstream ***river*** would be altered, changing the conditions that governed historical diversion opportunities and operations of ditches. [[142]](#footnote-143)142 This would "disturb the established relations between the individual ditches along the ***river*** downstream in Water District 67 and between the two States." [[143]](#footnote-144)143 Additionally, storage of water in the reservoir would affect relations between appropriators in ***Colorado*** upstream and downstream from the dam, requiring understandings between these water users as well. [[144]](#footnote-145)144

Patterson suggested a plan based on "pre-Caddoa interstate relations" in terms of "divertible and usable Stateline flows entering Kansas during the years 1908 to 1942." [[145]](#footnote-146)145 The plan proposed to use water in the John Martin Reservoir irrigation pool, when available, to maintain Stateline quantities at a specified percentage of ditch diversions from the Arkansas ***River*** in Water Districts 14, 17, and 67, excluding waters imported into the Arkansas ***River*** Basin. [[146]](#footnote-147)146

In early 1944, ***Colorado*** officials met with Kansas officials to discuss operations for the following irrigation season. ***Colorado*** put the Patterson Plan into effect beginning April 1, 1944. [[147]](#footnote-148)147 In June 1944, ***Colorado*** Attorney General Gail L. Ireland transmitted a proposal to Kansas Attorney General A. B. Mitchell for operation of John Martin Reservoir and administration of rights in the Arkansas ***River*** based on the Patterson Plan. [[148]](#footnote-149)148 Rejecting the Patterson Plan, Kansas demanded one-half of the water stored in John Martin Reservoir. ***Colorado*** acquiesced for a while, but at the end of 1945, ***Colorado*** water users insisted upon modifications. [[149]](#footnote-150)149

Thus, at the start of the Compact negotiations in 1946, very nearly the first order of business was to negotiate an agreement for storage in the reservoir. [[150]](#footnote-151)150 Harry B. Mendenhall of ***Colorado*** and W. E. Leavitt of **[\*79]** Kansas were appointed to negotiate an agreement. [[151]](#footnote-152)151 During the course of the Compact negotiations, they agreed upon, and the Governors of the two states approved, interim executive agreements to govern storage and release of water during the winter and summer storage seasons. [[152]](#footnote-153)152 These interim executive agreements were generally similar to provisions in Article V of the Compact, and were useful "in appraising the practical benefits of the Reservoir." [[153]](#footnote-154)153 They also demonstrated the advantages of simplified arrangements that avoided the detailed accounting inherent to the Stipulation of 1933 and the Patterson Plan. [[154]](#footnote-155)154

Thus, the attempt to implement the Stipulation of 1933 and the Patterson Plan highlighted the difficulty of developing a workable formula to divide waters stored in John Martin Reservoir on a volumetric basis. It also underscored the potential for disputes over accounting for storage, siltation, evaporation, and releases. Ultimately, the Compact apportioned the benefits of John Martin Reservoir in a way designed to avoid such disputes.

C. Article V: The Apportionment Article

Article V of the Compact apportions the benefits of the John Martin Reservoir project. It begins with the statement that "***Colorado*** and Kansas hereby agree upon the following basis of apportionment of the waters of the Arkansas ***River***" and is followed by eight paragraphs, lettered A through H. [[155]](#footnote-156)155 The drafters of the Compact fully understood that John Martin Reservoir would benefit water users in both states by regulating existing flows and storing flood flows. As General Kramer stated in his report to Congress:

Reservoir operations for conservation purposes will permit regulation of the normal flows of the Arkansas ***River*** at Caddoa that previously were diverted by irrigators downstream in ***Colorado*** and Kansas when **[\*80]** and as they occurred, thereby making such flows available for diversion more nearly when and as needed for the irrigation of crops; and will enable capture and conservation, for additional diversion and increased use in both States, of the flood flows of the Arkansas ***River*** at Caddoa (up to the available capacity of the conservation pool) that were previously incapable of being diverted or used in either State. [[156]](#footnote-157)156

The drafters of the Compact also understood that increased diversions by ***Colorado*** users upstream from the reservoir, as permitted under the Compact, would change the historical diversions and stream flows upstream from the reservoir, thereby reducing the supply entering the reservoir. [[157]](#footnote-158)157 The Compact divides this reduced supply entering the reservoir between ***Colorado*** and Kansas based on rates of flow, with accretions and return flow at the Stateline counting toward releases to which Kansas is entitled. [[158]](#footnote-159)158

1. Paragraphs A and B: Periods of Winter and Summer Storage and Releases of ***River*** Flow

Paragraphs V(A) and V(B) define periods of winter storage and summer storage in John Martin Reservoir. [[159]](#footnote-160)159 The paragraphs provide that all water entering the reservoir shall be stored to the limit of the then available conservation capacity, subject to the exceptions and releases of water equivalent to ***river*** flow provided therein. [[160]](#footnote-161)160 These provisions specified rates at which ***Colorado***, and in some circumstances Kansas, may demand releases of water equivalent to "***river*** flow." [[161]](#footnote-162)161 The Compact defines ***river*** flow as "the sum of the flows of the Arkansas and the Purgatoire ***Rivers*** into John Martin Reservoir as determined by gauging stations appropriately located above said Reservoir." [[162]](#footnote-163)162

During the summer storage period, ***Colorado*** may demand releases of ***river*** flow up to 500 c.f.s., and Kansas may demand releases of that portion of the ***river*** flow between 500 c.f.s. and 750 c.f.s., "irrespective of releases demanded by ***Colorado***." [[163]](#footnote-164)163 This does not apply when ***Colorado*** water users operate under decreed priorities. During the winter storage period, only ***Colorado*** is permitted to demand releases of ***river*** flow, not to exceed 100 c.f.s. [[164]](#footnote-165)164 Stated another way, Kansas can only demand a release of ***river*** flow during the summer storage season when the ***river*** flow exceeds 500 c.f.s.

**[\*81]**

2. Paragraph C: Releases of Stored Water

Paragraph V(C) specifies the conditions upon which water stored in the reservoir pursuant to paragraphs V(A) and V(B) shall be released upon demands by ***Colorado*** and Kansas. [[165]](#footnote-166)165 This provision sets maximum release rates during the summer storage season at which either state may demand releases of stored water, either separately or concurrently. [[166]](#footnote-167)166 The maximum release rate depends on whether the quantity in storage is more or less than 20,000 acre-feet. [[167]](#footnote-168)167 The following statement by the ***Colorado*** Commissioners helps explain the rationale for this flexible apportionment:

In considering it [Article V of the Compact] one must keep in mind the fact that it was the definite intent of the Commissioners that water must not be wasted and that there must be a flexibility and availability in use for water users in both States and that such requirements will not necessarily arise at the same time, dependent on weather conditions in different areas. Furthermore, it must not be overlooked that the principal beneficial purpose of the Reservoir is to conserve water which previously has been unusable and wasted because of lack of a storage facility in which to conserve it for future use. [[168]](#footnote-169)168

3. Paragraph E: Measurement and Conditions Governing Storage and Releases

Paragraph V(E) contains additional provisions concerning the measurement and administration of storage and releases. Section V(E)(1) provides that "releases of stored water and releases of ***river*** flow may be made simultaneously upon the demands of either or both States." [[169]](#footnote-170)169 For example, if the quantity of water stored in the conservation pool is less than 20,000 acre-feet, a stored water release to ***Colorado*** during the summer storage period cannot exceed 600 c.f.s. However, ***Colorado*** can also demand a release of water equivalent to the ***river*** flow, up to 500 c.f.s. [[170]](#footnote-171)170 Thus, assuming conditions were such that the water could be applied promptly to beneficial use, ***Colorado*** could demand a simultaneous release of stored water not to exceed 600 c.f.s., and a release of water equivalent to ***river*** flow up to 500 c.f.s, for a total of 1,100 c.f.s., whether or not Kansas made a demand for release of stored water or ***river*** flow. Likewise, in Kansas, assuming conditions were such that the water could be applied promptly to beneficial use, Kansas could demand a simultaneous release of stored water not to exceed 400 c.f.s., and of water equivalent to that portion **[\*82]** of the ***river*** flow between 500 c.f.s. and 750 c.f.s., for a total of 650 c.f.s.

As noted above, section V(E)(1) expressly states that releases of stored water and releases of ***river*** flow may be made simultaneously upon the demand of either or both states. [[171]](#footnote-172)171 This provision negates any implication that a demand for release of ***river*** flow or stored water is exclusive and would preclude a demand of release by the other. The provision also clarifies that either state could make simultaneous releases of stored water and ***river*** flow.

Paragraph (E)(2) provides "Water released upon concurrent or separate demands shall be applied promptly to beneficial use unless storage thereof downstream is authorized by the Administration." [[172]](#footnote-173)172 The drafters intended this provision to prevent either state from depleting water stored in the available conservation capacity of John Martin Reservoir by demanding releases for storage downstream.

Paragraph (E)(3) is fundamental to the apportionment effectuated by Article V. "Releases of ***river*** flow and of stored water to ***Colorado*** shall be measured by gauging stations located at or near John Martin Dam and the releases to which Kansas is entitled shall be satisfied by an equivalent in Stateline flow." [[173]](#footnote-174)173 Article III(C) defines the term "Stateline flow" to mean "the flow of waters of the Arkansas ***River*** as determined by gauging stations located at or near the Stateline." [[174]](#footnote-175)174 Article VI(B) further provides that water carried across the Stateline in the Frontier Canal, which diverts water in ***Colorado*** for irrigation uses in Kansas, shall be considered part of the Stateline flow. [[175]](#footnote-176)175

Paragraph E(4) provides that "When water is released from John Martin Reservoir appropriate allowances as determined by the Administration shall be made for the intervals of time required for such water to arrive at the points of diversion in ***Colorado*** and at the Stateline." [[176]](#footnote-177)176 The drafters recognized that implementation of the Compact would require expert administration. For example, releases from the reservoir do not instantaneously result in an increase to Stateline flow because of the distance between John Martin Dam and the Stateline. Additionally, the amount of time for releases to arrive at the Stateline varies depending upon the release rate and the conditions in the ***river***. Thus, the Compact Administration must determine periodically throughout the summer storage period, [[177]](#footnote-178)177 "the **[\*83]** water available at the ***Colorado***-Kansas Stateline for use in Kansas in order to effectuate the apportionment of water to Kansas as provided by the Compact." [[178]](#footnote-179)178 The Administration must then determine the intervals of time for water released upon demand by Kansas to arrive at the Stateline so that the releases to which Kansas is entitled are satisfied by an equivalent share in Stateline flow. [[179]](#footnote-180)179

Paragraph V(E)(5) is one of the more unusual provisions of the Compact, providing that "there shall be no allowance or accumulation of credits or debits for or against either State." [[180]](#footnote-181)180 General Kramer felt this provision made the Arkansas ***River*** Compact "boldly progressive." [[181]](#footnote-182)181 ***Colorado*** Commissioner Ireland described this provision during his testimony to Congress on the proposed Compact as "an innovation and something new in compacts," where "there would be no books kept and there would be no carry-over one way or another." [[182]](#footnote-183)182 In his report to Congress on the proposed compact, General Kramer stated that the absence of bookkeeping would put "administration [of the Compact] on a day-to-day basis unhampered by the potential problems and wrangles that would arise from periodic adjustment or balancing of water accounts." [[183]](#footnote-184)183

During the Compact Commissioners' deliberations, General Kramer stated that the intent of this provision was to eliminate "any accumulations or carry-overs in succeeding seasons," [[184]](#footnote-185)184 as well as vested rights for postponed deliveries. [[185]](#footnote-186)185 He continued that "the Compact ought to clearly state that there would be no carrying forward of any unbalance; that otherwise there would be claims and possibly law suits." [[186]](#footnote-187)186

While the drafters of the Compact believed that not accounting for credits or debits would reduce the potential for lawsuits, they failed to recognize that treating the conservation pool in John Martin Reservoir as a common pool, against which both states could demand releases, **[\*84]** would create a disincentive to conserve water. Particularly during years when there was limited water in storage, as soon as one state demanded a release of water, the other state made a demand to ensure that it received its share of water. [[187]](#footnote-188)187 The effect was that the conservation pool was often empty by April or early May during dry years. [[188]](#footnote-189)188

Section (E)(6) of the Compact provides that "Storage, releases from storage and releases of ***river*** flow authorized in this Article shall be accomplished pursuant to procedures prescribed by the Administration under the provisions of Article VIII." [[189]](#footnote-190)189 The Compact created an Administration consisting of three representatives from each state, responsible for requesting releases upon demand by ***Colorado*** and Kansas, and satisfying demands by Kansas with an equivalent in Stateline flow. [[190]](#footnote-191)190

4. Paragraphs D, E, and F: No Calls on Water Users Upstream From John Martin Dam when There is Water in the Conservation Pool; Administration when the Conservation Pool Is Empty; Distribution Agreements

Paragraph V(D) is best addressed in combination with paragraphs V(F) and (G). Paragraph (D) of Article V provides that:

Releases authorized by Paragraphs A, B and C of this Article, except when all ***Colorado*** water users are operating under decreed priorities as provided for in Paragraphs F and G of this Article [i.e., at times when the conservation pool is exhausted], shall not impose any call on ***Colorado*** water users that divert waters of the Arkansas ***River*** upstream from John Martin Dam. [[191]](#footnote-192)191

Paragraph V(D) is the mechanism by which the conservation pool **[\*85]** in John Martin Reservoir benefits water users upstream from John Martin Dam. [[192]](#footnote-193)192 By removing calls on ***Colorado*** water users upstream from John Martin Reservoir when there is water in the conservation pool, those upstream users are permitted to divert additional water at times when they previously had to forego such diversions to satisfy the calls of senior water rights in Water District 67. [[193]](#footnote-194)193 Thus, the Compact results in a reduced water supply to John Martin Reservoir, but provides a better regulated supply for water users in ***Colorado*** and Kansas below the dam. [[194]](#footnote-195)194

When the conservation pool in John Martin Reservoir is exhausted, Paragraph V(F) provides:

***Colorado*** shall administer the decreed rights of water users in ***Colorado*** Water District 67 [those who divert downstream from John Martin Dam] as against each other and as against all rights now or hereafter decreed to water users diverting upstream from John Martin dam on the basis of relative priorities in the same manner in which their respective priority rights were administered by ***Colorado*** before John Martin reservoir began to operate and as though John Martin dam had not been constructed. [[195]](#footnote-196)195

Paragraph V(F) further provides that such priority administration continues until water is again available for storage in the conservation pool. Thus, when the reservoir is empty, ***Colorado*** administers water rights as though the reservoir did not exist. Finally, paragraph V(F) addresses the administration of diversions in ***Colorado*** Water District 67:

Except when administration in ***Colorado*** is on a priority basis the water diversions in ***Colorado*** Water District 67 shall be administered by ***Colorado*** in accordance with distribution agreements made from time to time between the water users in such District and filed with the Administration and with the State Engineer of ***Colorado*** or, in the absence of such agreement, upon the basis of the respective priority decrees, as against each other, in said District. [[196]](#footnote-197)196

Paragraph V(F) is important to the operation of the conservation pool for the benefit of ***Colorado*** water users downstream from John Martin Dam. Prior to the construction of John Martin Dam, ***Colorado*** **[\*86]** administered diversions in ***Colorado*** Water District 67 upon the basis of their relative priorities. The drafters of the Compact recognized that storage of water in the conservation pool under the Compact would alter the regimen of the ***river*** downstream from the dam and the conditions that governed the historical diversion opportunities by water users in Water District 67. [[197]](#footnote-198)197 Therefore, the drafters added this provision to allow water users in Water District 67 to enter into distribution agreements governing the administration of diversions in Water District 67. The ***Colorado*** Commissioners noted in their report that such a distribution agreement was then in effect, "and satisfactorily so." [[198]](#footnote-199)198 In the absence of an agreement, the Compact provides for administration on the basis of prior appropriation.

5. Paragraph G: Kansas' Entitlement when ***Colorado*** Reverts to Administration of Decreed Priorities

Paragraph V(G) defines Kansas' entitlement during periods when ***Colorado*** reverts to administration of decreed priorities (i.e., when the conservation pool is empty). During such times, Kansas "shall not be entitled to any portion of the ***river*** flow entering John Martin Reservoir." [[199]](#footnote-200)199 Paragraph V(G) then states that "waters of the Arkansas ***River*** originating in ***Colorado*** which may flow across the Stateline during such periods are hereby apportioned to Kansas." [[200]](#footnote-201)200 These provisions derive from the opinion in ***Colorado*** v. Kansas, in which the Supreme Court declined to make any definite apportionment of water between the States, or to limit the exercise of existing water rights in ***Colorado***. [[201]](#footnote-202)201

6. Paragraph H: Limitations on Transfer of Rights Below John Martin to Points Above, and on Increase of Ditch Diversion Rights Below the Reservoir

Paragraph V(H) is the final paragraph of Article V, entertaining a limitation on transfers of rights from below John Martin Reservoir to points above the reservoir. Paragraph V(H) also places a limitation on increasing ditch diversion rights below the reservoir in ***Colorado*** and Kansas beyond the total present rights of such ditches, "and provides for a finding by the administrative agency, in respect to material depletion or adverse effect in respect thereto." [[202]](#footnote-203)202

**[\*87]** It should be noted that the first limitation in paragraph V(H), on the transfer of rights from below John Martin Reservoir to points upstream from John Martin Dam, applies only to ditches in Water District 67. Return flows from ditches in Water District 67 contribute to water available at the Stateline where releases for Kansas are measured. [[203]](#footnote-204)203 If a water user changed the point of diversion of a water right from downstream to upstream from John Martin Dam, it could change the amount or timing of those return flows. The change in flows would then affect the amount of releases to satisfy demands by Kansas and the amount of flow at the Stateline when John Martin Reservoir is empty. Both states have an obvious interest in any such change.

The second limitation, on increases of ditch diversion rights, applies to ditches in ***Colorado*** Water District 67 and Kansas ditches between the Kansas state line and Garden City, Kansas. [[204]](#footnote-205)204 The drafters intended this provision as assurance that the benefits of the John Martin Reservoir went to the existing ditches in ***Colorado*** Water District 67 and the Kansas ditches between the state line and Garden City, unless the "usable quantity and availability for use of the waters of the Arkansas ***River***" to such water users would not be "materially depleted or adversely affected." [[205]](#footnote-206)205 George S. Knapp, the Kansas Chief Engineer and a Kansas Commissioner, testified during the hearings held by Congress on the proposed Compact that water users "will not in either State be able to bring more land under irrigation. The water supply is not adequate. The water users in eastern ***Colorado*** and, to a greater extent, in western Kansas, under these old established canals, have had a very uncertain and erratic water supply." [[206]](#footnote-207)206

Knapp further testified:

This [the Compact] will help to stabilize the water supply for those existing systems. The Arkansas does not produce sufficient water to enable any expansion whatsoever. All it does is to make a quantity of water, that hitherto has been winter flow and summer flood waters, which have gone to waste, usable, and to convert a portion of that into usable water. That is divided 60 percent to ***Colorado*** and 40 percent to Kansas, and will help to stabilize the areas but will provide no additional water for construction [of improvements to bring more land under irrigation]. [[207]](#footnote-208)207

**[\*88]** The drafters recognize that there may be instances where the "useable quantity and availability for use to the waters of the Arkansas ***River*** to water users in ***Colorado*** Water District 67 and Kansas" might not be "materially depleted or adversely affected," [[208]](#footnote-209)208 but paragraph V(H) imposes a requirement for making findings of fact before the ditch diversion rights in ***Colorado*** Water District 67 and in Kansas could be increased "beyond the total present rights of said ditches." [[209]](#footnote-210)209

D. Article IV(D): Future Development

While Compact negotiations focused on the apportionment of the benefits arising from the construction of the John Martin Reservoir project, the Compact also addressed future development. Article IV(D) provides:

This Compact is not intended to impede or prevent future beneficial development of the Arkansas ***River*** basin in ***Colorado*** and Kansas by Federal or State agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs, and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas ***River***, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in ***Colorado*** and Kansas under this Compact by such future development or construction. [[210]](#footnote-211)210

It is important to note three things about the proviso of Article IV(D). First, the proviso is limited to "waters of the Arkansas ***River***, as defined in Article III." [[211]](#footnote-212)211 It does not apply to waters imported into the Arkansas ***River*** Basin from other ***river*** basins. [[212]](#footnote-213)212 Second, the proviso applies only to material depletion by future development or construction, but future development includes "the improved or prolonged functioning of existing works." [[213]](#footnote-214)213 In the 1995 Kansas v. ***Colorado*** case, the Special Master concluded, and the Supreme Court agreed, that the proviso of Article IV(D) limited groundwater pumping by wells existing at the time of the Compact to the amount pumped during the Compact negotiations. [[214]](#footnote-215)214 Third, the proviso limits only material depletions of the waters of the Arkansas ***River*** "in usable quantity or availability for use to the water users in ***Colorado*** and Kansas under the Compact." [[215]](#footnote-216)215 The terms "materially depleted" and **[\*89]** "in usable quantity or availability for use to the water users in ***Colorado*** and Kansas under this Compact" are not defined in the Compact. However, it was clear that the intent of the proviso was to protect usable water supplies available to existing water users in ***Colorado*** and Kansas, recognizing that those water supplies would be altered by operation of the Compact. [[216]](#footnote-217)216

General Kramer stated that Article IV(D) was "intended to leave the door open - as it should be - for beneficial development of the Arkansas ***River*** basin in ***Colorado*** and Kansas by any and all proper ways and means." [[217]](#footnote-218)217 However, he went on to state:

Such development, whatever form it may take, must fit into the framework of the proposed compact; it must not disrupt the relationships and rights established thereunder and must not affect adversely the interests of the States and their water users under the compact. Without these safeguards, the interstate controversy would soon be revived and the proposed compact would be wasted effort. [[218]](#footnote-219)218

The framework of the proposed compact was: (1) to conserve water in John Martin Reservoir that was previously unusable and wasted; (2) to remove calls on users who divert upstream from John Martin Dam when there is already water in the conservation pool; and (3) to divide the benefits resulting from conservation storage in John Martin Dam Reservoir on the basis of rates of flow, with the "definite intent … that water must not be wasted and that there must be a flexibility and availability in use for water users in both States." [[219]](#footnote-220)219

Although the term "materially depleted" was not defined, the ***Colorado*** v. Kansas opinion certainly gave meaning to the word "depleted." [[220]](#footnote-221)220 During the Compact negotiations the Commissioners added the term "materially" to avoid "an extreme interpretation." [[221]](#footnote-222)221 The phrase "in usable quantity or availability for use to the water users in ***Colorado*** and Kansas under this Compact" takes on meaning once one recognizes that even with John Martin Reservoir's operation under the Compact, not all waters of the Arkansas ***River*** would be usable or available for use by water users in ***Colorado*** or Kansas who **[\*90]** had rights existing at the time the Compact was negotiated. Shortly after the Compact's approval, a Bureau study on the feasibility of constructing another reservoir project near the ***Colorado***-Kansas Stateline, named the Granada Project, confirms this assertion. [[222]](#footnote-223)222 The Bureau based the Granada Project's supply on water that could be stored below John Martin Reservoir without materially depleting the usable quantity or availability in ***Colorado*** and Kansas. [[223]](#footnote-224)223 A 1955 Report prepared by the Arkansas-White-Red Basins Inter-Agency Committee summarized the project:

119. Construction of the potential Granada Reservoir, with 30,000 acre-feet capacity, would provide an average annual supplemental water supply of 19,000 acre-feet for irrigated lands below John Martin Reservoir in ***Colorado*** and Kansas. The reservoir would be operated in close coordination with, and would complement the operation of, John Martin Reservoir. It would be operated in accordance with the provisions of the Arkansas ***River*** Compact and would accomplish three major purposes: (a) replacement storage would be furnished to offset possible depletions to John Martin Reservoir resulting from increased use of water on Purgatoire ***River*** and other tributaries; (b) permit the maintenance of a permanent fish pool at John Martin Reservoir by replacement of depletions arising from evaporation from such permanent pool; and (c) conserve flows in the Arkansas ***River*** now being lost past Garden City… .

153. John Martin Reservoir is located on the Arkansas ***River*** in ***Colorado***, about 57 miles upstream from the ***Colorado***-Kansas State line. The reservoir is operated in accordance with the terms of the Arkansas ***River*** Compact. The average annual inflow to the reservoir from the period 1921 to 1950 is estimated at 295,200 acre-feet. The net average annual stream accretions between the reservoir and the State line are 109,500 acre-feet, and the estimated average annual discharge at the State line is 237,100 acre-feet, assuming the reservoir is in operation. Much of this discharge occurs as flood flows entering the ***river*** below John Martin Reservoir and cannot be considered completely usable. [[224]](#footnote-225)224

The Granada Project proved infeasible, as did subsequent Kansas reservoir projects the Corps studied. These studies demonstrated, however, ***Colorado***'s and Kansas' recognition that under the Compact, some waters in the Arkansas ***River*** were not usable or available for use by the water users in ***Colorado*** and Kansas under the Compact.

It should be noted that Article IV(D) applies to future development or construction in Kansas as well as ***Colorado***, because Kansas could demand additional water releases from John Martin Reservoir for new developments. [[225]](#footnote-226)225 Such releases would reduce the **[\*91]** water available to ditches in ***Colorado*** Water District 67, hasten the exhaustion of the conservation pool, and increase calls against ***Colorado*** water users diverting upstream from John Martin Dam. [[226]](#footnote-227)226

E. Changed Conditions and the 1980 Operating Plan

The Compact's drafters intended Article V's provisions to provide flexibility and conserve water that had been wasted by non-use. [[227]](#footnote-228)227 They understood that under some conditions, ***Colorado*** would receive more than 60 percent of the water stored in the conservation pool of John Martin Reservoir because ***Colorado*** had the "substantial advantage of using all accretions and return flow at the State line to make up Kansas' 40% share at the state line." [[228]](#footnote-229)228 ***Colorado*** Commissioner Gail Ireland testified concerning this matter at Congressional hearings on the proposed Compact:

It has been mentioned here that the division was roughly 60 percent to ***Colorado*** and 40 percent to Kansas. That is true when qualified with the statement that that is based on rate of flow and not necessarily volume of water in the reservoir. That was done purposely in order to provide the greatest flexibility and most economic and timely use of this water for both States.

The result of this compact might well be that Kansas over a given period might withdraw far more than her so-called 40 percent, if the needs and conditions require it; depending on local rains, flash floods that may appear at different places along the ***river***. And, by the same token, ***Colorado*** might at certain periods benefit to an extent of more than 60 percent, based on rate of flow. But that was thoroughly understood by all commissioners, and was done purposely in order to provide the water users with the very best possible use of this water at all times. [[229]](#footnote-230)229

Unfortunately, by the 1970s, "rigid adherence to the 60-40 apportionment" replaced what General Kramer described as "this simplified yet sensible concept of apportionments and administration … governed by common-sense requirements and some administrative discretion." [[230]](#footnote-231)230 To insure they each received their share of the reservoir's water, each state usually demanded simultaneous releases at **[\*92]** the maximum rates. [[231]](#footnote-232)231 Thus, what had been intended as a method to provide the best possible water use ended up in an undesirable situation as water was released upon both states' demands, even though it would have been more beneficial to hold it for later use.

Inefficient water use led the Compact Administration to adopt an Operating Plan for John Martin Reservoir in 1980. [[232]](#footnote-233)232 The Operating Plan established reservoir accounts for ditches in Kansas and ***Colorado*** Water District 67. [[233]](#footnote-234)233 In effect, Kansas was allocated 40 percent of the water stored in the conservation pool of John Martin Reservoir, and ***Colorado*** Water District 67 ditches were allocated 60 percent. The plan also authorized three ***Colorado*** ditch companies to store "other" water in John Martin Reservoir, including water stored under the Pueblo winter water storage program. In addition, 35 percent of the water these ditch companies delivered to John Martin Reservoir was used to create a "transit loss" account to assist in delivering water from the Kansas account to the Stateline. [[234]](#footnote-235)234 Despite Kansas' suggestions that the account system is ultra vires, the Operating Plan resulted in more beneficial water use, and although it has since been amended, neither State has terminated the plan for more than twenty years. [[235]](#footnote-236)235

[*V*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T3X2-8T6X-731X-00000-00&context=1516831). CONCLUSION

At the outset of this paper, we posed the question: Why did ***Colorado*** and Kansas agree to an apportionment of the Arkansas ***River*** that did not apportion its waters on the basis of beneficial consumptive water use and did not impose a delivery obligation on ***Colorado***? The answer partly lies in the Supreme Court's ***Colorado*** v. Kansas decision, which denies Kansas' request for an apportionment in second feet or acre-feet. ***Colorado*** won a significant victory in that case, and was unwilling to bargain away the fruits of that victory to obtain a division of John Martin Reservoir's storage benefits. Thus, except for the provisions governing storage in John Martin Reservoir's conservation pool and releases of stored water and ***river*** flow, no limitations were imposed in the Compact on the exercise of existing rights of appropriators in ***Colorado***, other than the improved or prolonged functioning of existing works.

Two documents further explain the Compact's development and the philosophy guiding its drafters. The first document is a memorandum dated April 12, 1946, by Donald C. Bondurant, a Corps engineer, who assisted General Kramer during the Compact **[\*93]** negotiations. [[236]](#footnote-237)236 The Compact Commission's Engineering Committee, consisting of General Kramer, Charles L. Patterson, Chief Engineer of the ***Colorado*** Water Conservation Board, and George S. Knapp, the Kansas Chief Engineer, originally intended to prepare a series of reservoir operations studies as the basis for apportioning the Arkansas ***River***'s waters. [[237]](#footnote-238)237 Bondurant, however, pointed to the fundamental problem inherent in such studies: John Martin Reservoir's historic inflow and outflow would change under ***Colorado***'s proposal to allow upstream users to divert without regard to downstream rights, so long as water remained in the conservation pool. [[238]](#footnote-239)238 As a result, Bondurant noted, a traditional reservoir operations study that fixed inflow would be difficult. [[239]](#footnote-240)239

The second document is a letter from General Kramer to the Corps of Engineers, explaining why no final engineering report had been prepared:

Even before the date of the Second Interim Report, the trend of the negotiations took a decided turn away from the concept of fixed operating conditions based on firm interstate allocations toward the more flexible philosophy, best described as "live and let live," which became the basis of the ultimate Compact. That principle, which was an outgrowth of the Interim Executive Agreements between ***Colorado*** and Kansas governing the operation of John Martin Reservoir during the period of compact negotiations, permitted either State to obtain water from John Martin Reservoir (when stored water was available) without regard to the other State and without the need for keeping books to balance hypothetical debits and credits. [[240]](#footnote-241)240

Given the difficulties in reaching agreement on the assumptions of the operations studies, it is understandable that the Commissioners adopted "this simplified yet sensible concept of apportionments and administration." [[241]](#footnote-242)241 While the "live and let live" philosophy may seem surprising as a basis for interstate apportionment, the fact remains that the States agreed to, and Congress consented to, a compact based on a unique, flexible apportionment, without debits or credits, and without an apportionment based on beneficial consumptive uses or a delivery obligation. The Arkansas ***River*** Compact is thus the best compact that ***Colorado*** **[\*94]** has entered into, and also the worst compact that ***Colorado*** has entered into, because it provides no quantitative standard to determine whether future developments, including the improved or prolonged functioning of existing works, are in compliance with the Compact.

**[\*95]**

[*VI*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T4F2-D6RV-H37N-00000-00&context=1516831). APPENDIX

ARKANSAS ***RIVER*** COMPACT

The general assembly hereby ratifies the compact between the state of ***Colorado*** and the state of Kansas designated as the "Arkansas ***river*** compact" signed in the city of Denver, state of ***Colorado***, on the 14th day of December, A. D. 1948, by Henry C. Vidal, Gail L. Ireland, and Harry B. Mendenhall, commissioners for the state of ***Colorado***, and George S. Knapp, Edward F. Arn, William E. Leavitt, and Roland H. Tate, commissioners for the state of Kansas, and approved by Hans Kramer, representative of the United States of America. Said compact is as follows:

The state of ***Colorado*** and the state of Kansas, parties signatory to this compact (hereinafter referred to as "***Colorado***" and "Kansas," respectively, or individually as a "state," or collectively as the "states") having resolved to conclude a compact with respect to the waters of the Arkansas ***river***, and being moved by considerations of interstate comity, having appointed commissioners as follows:

|  |  |
| --- | --- |
|  |  |
|  | Roland H. Tate |
| For the State of ***Colorado*** | Henry C. Vidal, |
|  | Gail L. Ireland, and |
|  | Harry B. Mendenhall |
|  |  |
| For the State of Kansas | George S. Knapp, |
|  | Edward F. Arn, |
|  | William E. Leavitt, and |
|  | Roland H. Tate |

The consent of the Congress of the United States to negotiate and enter into an interstate compact not later than January 1, 1950, having been granted by Public Law 34, 79th Congress, 1st Session, and pursuant thereto the President having designated Hans Kramer as the representative of the United States, the said commissioners for ***Colorado*** and Kansas, after negotiations participated in by the representative of the United States, have agreed as follows:

ARTICLE I

The major purposes of this compact are to:

A. Settle existing disputes and remove causes of future controversy between the states of ***Colorado*** and Kansas, and between citizens of one and citizens of the other state, concerning the waters of the Arkansas ***river*** and their control, conservation and utilization for irrigation and other beneficial purposes.

B. Equitably divide and apportion between the states of ***Colorado*** and Kansas the waters of the Arkansas ***river*** and their utilization as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin reservoir project for water conservation purposes.

**[\*96]**

ARTICLE II

The provisions of this compact are based on (1) the physical and other conditions peculiar to the Arkansas ***river*** and its natural drainage basin, and the nature and location of irrigation and other developments and facilities in connection therewith; (2) the opinion of the United States supreme court entered December 6, 1943, in the case of [***Colorado*** *v. Kansas (320 U. S. 383)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) concerning the relative rights of the respective states in and to the use of waters of the Arkansas ***river***; and (3) the experience derived under various interim executive agreements between the two states apportioning the waters released from the John Martin reservoir as operated by the corps of engineers.

ARTICLE III

As used in this compact:

A. The word "stateline" means the geographical boundary line between ***Colorado*** and Kansas.

B. The term "waters of the Arkansas ***river***" means the waters originating in the natural drainage basin of the Arkansas ***river***, including its tributaries, upstream from the stateline, and excluding waters brought into the Arkansas ***river*** basin from other ***river*** basins.

C. The term "stateline flow" means the flow of waters of the Arkansas ***river*** as determined by gauging stations located at or near the stateline. The flow as determined by such stations, whether located in ***Colorado*** or Kansas, shall be deemed to be the actual stateline flow.

D. "John Martin reservoir project" is the official name of the facility formerly known as Caddoa reservoir project, authorized by the Flood Control Act of 1936, as amended, for construction, operation and maintenance by the war department, corps of engineers, later designated as the corps of engineers, department of the army, and herein referred to as the "corps of engineers." "John Martin reservoir" is the water storage space created by "John Martin dam".

E. The "flood control storage" is that portion of the total storage space in John Martin reservoir allocated to flood control purposes.

F. The "conservation pool" is that portion of the total storage space in John Martin reservoir lying below the flood control storage.

G. The "ditches of ***Colorado*** water district 67" are those ditches and canals which divert water from the Arkansas ***river*** or its tributaries downstream from John Martin dam for irrigation use in ***Colorado***.

H. The term "***river*** flow" means the sum of the flows of the Arkansas and the Purgatoire ***rivers*** into John Martin reservoir as determined by gauging stations appropriately located above said reservoir.

[*I*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1516831). The term "the administration" means the Arkansas ***river*** compact administration established under article VIII.

**[\*97]**

ARTICLE IV

Both states recognize that:

A. This compact deals only with the waters of the Arkansas ***river*** as defined in article III.

B. This compact is not concerned with the rights, if any, of the state of New Mexico or its citizens in and to the use in New Mexico of waters of Trinchera creek or other tributaries of the Purgatoire ***river***, a tributary of the Arkansas ***river***.

C.(1) John Martin dam will be operated by the corps of engineers to store and release the waters of the Arkansas ***river*** in and from John Martin reservoir for its authorized purposes.

(2) The bottom of the flood control storage is presently fixed by the chief of engineers, U. S. Army, at elevation 3,851 feet above mean sea level. The flood control storage will be operated for flood control purposes and to those ends will impound or regulate the streamflow volumes that are in excess of the then available storage capacity of the conservation pool. Releases from the flood control storage may be made at times and rates determined by the corps of engineers to be necessary or advisable without regard to ditch diversion capacities or requirements in either or both states.

(3) The conservation pool will be operated for the benefit of water users in ***Colorado*** and Kansas, both upstream and downstream from John Martin dam, as provided in this compact. The maintenance of John Martin dam and appurtenance works may at times require the corps of engineers to release waters then impounded in the conservation pool or to prohibit the storage of water therein until such maintenance work is completed. Flood control operation may also involve temporary utilization of conservation storage.

D. This compact is not intended to impede or prevent future beneficial development of the Arkansas ***river*** basin in ***Colorado*** and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas ***river***, as defined in article III, shall not be materially depleted in usable quantity or availability for use to the water users in ***Colorado*** and Kansas under this compact by such future development or construction.

ARTICLE V

***Colorado*** and Kansas hereby agree upon the following basis of apportionment of the waters of the Arkansas ***river***:

A. Winter storage in John Martin reservoir shall commence on November 1st of each year and continue to and include the next succeeding March 31st. During said period all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that ***Colorado*** may demand releases of water **[\*98]** equivalent to the ***river*** flow, but such releases shall not exceed 100 c.f.s. (cubic feet per second) and water so released shall be used without avoidable waste.

B. Summer storage in John Martin reservoir shall commence on April 1st of each year and continue to and include the next succeeding October 31st. During said period, except when ***Colorado*** water users are operating under decreed priorities as provided in paragraphs F and G of this article, all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that ***Colorado*** may demand releases of water equivalent to the ***river*** flow up to 500 c.f.s., and Kansas may demand releases of water equivalent to that portion of the ***river*** flow between 500 c.f.s. and 750 c.f.s., irrespective of releases demanded by ***Colorado***.

C. Releases of water stored pursuant to the provisions of paragraphs A and B of this article shall be made upon demands by ***Colorado*** and Kansas concurrently or separately at any time during the summer storage period. Unless increases to meet extraordinary conditions are authorized by the administration, separate releases of stored water to ***Colorado*** shall not exceed 750 c.f.s., separate releases of stored water to Kansas shall not exceed 500 c.f.s., and concurrent releases of stored water shall not exceed a total of 1250 c.f.s.: Provided, that when water stored in the conservation pool is reduced to a quantity less than 20,000 acre-feet, separate releases of stored water to ***Colorado*** shall not exceed 600 c.f.s., and separate releases of stored water to Kansas shall not exceed 400 c.f.s., and concurrent releases of stored water shall not exceed 1,000 c.f.s.

D. Releases authorized by paragraphs A, B, and C of this article, except when all ***Colorado*** water users are operating under decree priorities as provided in paragraphs F and G of this article, shall not impose any call on ***Colorado*** water users that divert waters of the Arkansas ***river*** upstream from John Martin dam.

E.(1) Releases of stored water and releases of ***river*** flow may be made simultaneously upon the demands of either or both states.

(2) Water released upon concurrent or separate demands shall be applied promptly to beneficial use unless storage thereof downstream is authorized by the administration.

(3) Releases of ***river*** flow and of stored water to ***Colorado*** shall be measured by gauging stations located at or near John Martin dam and the releases to which Kansas is entitled shall be satisfied by an equivalent in state line flow.

(4) When water is released from John Martin reservoir appropriate allowances as determined by the administration shall be made for the intervals of time required for such water to arrive at the points of diversion in ***Colorado*** and at the state line.

(5) There shall be no allowance or accumulation of credits or debits for or against either state.

(6) Storage, releases from storage and releases of ***river*** flow authorized in this article shall be accomplished pursuant to **[\*99]** procedures prescribed by the administration under the provisions of article VIII.

F. In the event the administration finds that within a period of fourteen days the water in the conservation pool will be or is liable to be exhausted, the administration shall forthwith notify the state engineer of ***Colorado***, or his duly authorized representative, that commencing upon a day certain within said fourteen day period, unless a change of conditions justifies cancellation or modification of such notice, ***Colorado*** shall administer the decreed rights of water users in ***Colorado*** water district 67 as against each other and as against all rights now or hereafter decreed to water users diverting upstream from John Martin dam on the basis of relative priorities in the same manner in which their respective priority rights were administered by ***Colorado*** before John Martin reservoir began to operate and as though John Martin dam had not been constructed. Such priority administration by ***Colorado*** shall be continued until the administration finds that water is again available in the conservation pool for release as provided in this compact, and timely notice of such finding shall be given by the administration to the state engineer of ***Colorado*** or his duly authorized representative; provided, that except as controlled by the operation of the preceding provisions of this paragraph and other applicable provisions of this compact, when there is water in the conservation pool the water users upstream from John Martin reservoir shall not be affected by the decrees to the ditches in ***Colorado*** water district 67. Except when administration in ***Colorado*** is on a priority basis the water diversions in ***Colorado*** water district 67 shall be administered by ***Colorado*** in accordance with distribution agreements made from time to time between the water users in such district and filed with the administration and with the state engineer of ***Colorado*** or, in the absence of such agreement, upon the basis of the respective priority decrees, as against each other, in said district.

G. During periods when ***Colorado*** reverts to administration of decree priorities, Kansas shall not be entitled to any portion of the ***river*** flow entering John Martin reservoir. Waters of the Arkansas ***river*** originating in ***Colorado*** which may flow across the state line during such periods are hereby apportioned to Kansas.

H. If the usable quantity and availability for use of the waters of the Arkansas ***river*** to water users in ***Colorado*** water district 67 and Kansas will be thereby materially depleted or adversely affected, (1) priority rights now decreed to the ditches of ***Colorado*** water district 67 shall not hereafter be transferred to other water districts in ***Colorado*** or to points of diversion or places of use upstream from John Martin dam; and (2) the ditch diversion rights from the Arkansas ***river*** in ***Colorado*** water district 67 and of Kansas ditches between the state line and Garden City shall not hereafter be increased beyond the total present rights of said ditches, without the administration, in either case (1) or (2), making findings of fact that no such depletion or adverse effect will result from such proposed transfer or increase. Notice of legal proceedings for any such proposed transfer or increase shall be given **[\*100]** to the administration in the manner and within the time provided by the laws of ***Colorado*** or Kansas in such cases.

ARTICLE VI

A.(1) Nothing in this compact shall be construed as impairing the jurisdiction of Kansas over the waters of the Arkansas ***river*** that originate in Kansas and over the waters that flow from ***Colorado*** across the state line into Kansas.

(2) Except as otherwise provided, nothing in this compact shall be construed as supplanting the administration by ***Colorado*** of the rights of appropriators of waters of the Arkansas ***river*** in said state as decreed to said appropriators by the courts of ***Colorado***, nor as interfering with the distribution among said appropriators by ***Colorado***, nor as curtailing the diversion and use for irrigation and other beneficial purposes in ***Colorado*** of the waters of the Arkansas ***river***.

B. Inasmuch as the Frontier canal diverts waters of the Arkansas ***river*** in ***Colorado*** west of the state line for irrigation uses in Kansas only, ***Colorado*** concedes to Kansas and Kansas hereby assumes exclusive administrative control over the operation of the Frontier canal and its headworks for such purposes, to the same extent as though said works were located entirely within the state of Kansas. Water carried across the state line in Frontier canal or any other similarly situated canal shall be considered to be part of the state line flow.

ARTICLE VII

A. Each state shall be subject to the terms of this compact. Where the name of the state or the term "state" is used in this compact these shall be construed to include any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the waters of the Arkansas ***river*** under the authority of that state.

B. This compact establishes no general principle or precedent with respect to any other interstate stream.

C. Wherever any state or federal official agency is referred to in this compact such reference shall apply to the comparable official or agency succeeding to their duties and functions.

ARTICLE VIII

A. To administer the provisions of this compact there is hereby created an interstate agency to be known as the Arkansas ***river*** compact administration herein designated as "the administration".

B. The administration shall have power to:

(1) Adopt, amend and revoke by-laws, rules and regulations consistent with the provisions of this compact;

(2) Prescribe procedures for the administration of this compact: Provided, that where such procedures involve the operation **[\*101]** of John Martin reservoir project they shall be subject to the approval of the district engineer in charge of said project;

(3) Perform all functions required to implement this compact and to do all things necessary, proper or convenient in the performance of its duties.

C. The membership of the administration shall consist of three representatives from each state who shall be appointed by the respective governors for a term not to exceed four years. One ***Colorado*** representative shall be a resident of and water right owner in water districts 14 or 17, one ***Colorado*** representative shall be a resident of and water right owner in water district 67, and one ***Colorado*** representative shall be the director of the ***Colorado*** water conservation board. Two Kansas representatives shall be residents of and water right owners in the counties of Finney, Kearny or Hamilton, and one Kansas representative shall be the chief state official charged with the administration of water rights in Kansas. The President of the United States is hereby requested to designate a representative of the United States, and if a representative is so designated he shall be an ex officio member and act as chairman of the administration without vote.

D. The state representatives shall be appointed by the respective governors within thirty days after the effective date of this compact. The administration shall meet and organize within sixty days after such effective date. A quorum for any meeting shall consist of four members of the administration: Provided, that at least two members are present from each state. Each state shall have but one vote in the administration and every decision, authorization or other action shall require unanimous vote. In case of a divided vote on any matter within the purview of the administration, the administration may, by subsequent unanimous vote, refer the matter for arbitration to the representative of the United States or other arbitrator or arbitrators, in which event the decision made by such arbitrator or arbitrators shall be binding upon the administration.

E.(1) The salaries, if any, and the personal expenses of each member shall be paid by the government which he represents. All other expenses incident to the administration of this compact which are not paid by the United States shall be borne by the states on the basis of 60 per cent by ***Colorado*** and 40 per cent by Kansas.

(2) In each even numbered year the administration shall adopt and transmit to the governor of each state its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by each state. Each state shall appropriate and pay the amount due by it to the administration.

(3) The administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each state shall have the right to make an examination and audit of the accounts of the administration at any time.

**[\*102]** F. Each state shall provide such available facilities, equipment and other assistance as the administration may need to carry out its duties. To supplement such available assistance the administration may employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the administration, and shall not be considered to be employees of either state.

G.(1) The administration shall ***co***-operate with the chief official of each state charged with the administration of water rights and with federal agencies in the systematic determination and correlation of the facts as to the flow and diversion of the waters of the Arkansas ***river*** and as to the operation and siltation of John Martin reservoir and other related structures. The administration shall ***co***-operate in the procurement, interchange, compilation and publication of all factual data bearing upon the administration of this compact without, in general, duplicating measurements, observations or publications made by state or federal agencies. State officials shall furnish pertinent factual data to the administration upon its request. The administration shall, with the collaboration of the appropriate federal and state agencies, determine as may be necessary from time to time, the location of gauging stations required for the proper administration of this compact and shall designate the official records of such stations for its official use.

(2) The director, U. S. geological survey, the commissioner of reclamation and the chief of engineers, U. S. Army, are hereby requested to collaborate with the administration and with appropriate state officials in the systematic determination and correlation of data referred to in paragraph G (1) of this article and in the execution of other duties of such officials which may be necessary for the proper administration of this compact.

(3) If deemed necessary for the administration of this compact, the administration may require the installation and maintenance, at the expense of water users, of measuring devices of approved type in any ditch or group of ditches diverting water from the Arkansas ***river*** in ***Colorado*** or Kansas. The chief official of each state charged with the administration of water rights shall supervise the execution of the administration's requirements for such installations.

H. Violation of any of the provisions of this compact or other actions prejudicial thereto which come to the attention of the administration shall be promptly investigated by it. When deemed advisable as the result of such investigation, the administration may report its findings and recommendations to the state official who is charged with the administration of water rights for appropriate action, it being the intent of this compact that enforcement of its terms shall be accomplished in general through the state agencies and officials charged with the administration of water rights.

[*I*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1516831). Findings of fact made by the administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of the facts found.

**[\*103]** J. The administration shall report annually to the governors of the states and to the President of the United States as to matters within its purview.

ARTICLE IX

A. This compact shall become effective when ratified by the legislature of each state and when consented to by the congress of the United States by legislation providing substantially, among other things, as follows:

Nothing contained in this act or in the compact herein consented to shall be construed as impairing or affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such compact: Provided, that the chief of engineers is hereby authorized to operate the conservation features of the John Martin reservoir project in a manner conforming to such compact with such exceptions as he and the administration created pursuant to the compact may jointly approve.

B. This compact shall remain in effect until modified or terminated by unanimous action of the states and in the event of modification or termination all rights then established or recognized by this compact shall continue unimpaired.

IN WITNESS WHEREOF, the commissioners have signed this compact in triplicate original, one of which shall be forwarded to the secretary of state of the United States of America and one of which shall be forwarded to the governor of each signatory state.

Done in the city and county of Denver, in the state of ***Colorado***, on the fourteenth day of December, in the year of our Lord one thousand nine hundred and forty-eight.

Henry C. Vidal,

Gail L. Ireland,

Harry B. Mendenhall,

Commissioners for ***Colorado***.

Attest:

Warden L. Noe, Secretary.

George S. Knapp,

Edward F. Arn,

William E. Leavitt,

Roland H. Tate,

Commissioners for Kansas.

Approved:

Hans Kramer,

Representative of the United States.

University of Denver Water Law Review

Copyright (c) 2001 University of Denver (***Colorado*** Seminary) College of Law

**End of Document**

1. 1 The Arkansas ***River*** Compact is an interstate compact between ***Colorado*** and Kansas. Commissioners for ***Colorado*** and Kansas signed the Compact on December 14, 1948, and it became effective on May 31, 1949, after it was ratified by each state's legislature and approved by Congress. Arkansas ***River*** Compact, [***Colo.*** *Rev. Stat. 37-69-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J34S-00000-00&context=1516831) (2001), [*Kan. Stat. Ann. 82a-520*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BY4-TCW1-DYB8-31GJ-00000-00&context=1516831) (1997), [*63 Stat. 145.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) The ***Colorado*** and Kansas Acts ratifying the Compact are printed in the Congressional hearings on the Compact. Arkansas ***River*** Compact: Hearing on S. 1448 Before the Senate Comm. on Interior and Insular Affairs, 81st Cong. 8-9, 18-19 (1949) [hereinafter Senate Hearing]; Arkansas ***River*** Compact: Hearing on H.R. 4151 Before the Subcomm. on Irrigation and Reclamation of the House Comm. on Public Lands, 81st Cong. 10-11, 31 (1949) [hereinafter House Hearing]. [↑](#footnote-ref-2)
2. 2 [*U.S. Const. art. I, 10, cl. 3*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PPF2-8T6X-72VY-00000-00&context=1516831) states: "No State shall, without the Consent of Congress … enter into any Agreement or Compact with another State..." In [*Kansas v.* ***Colorado****, 206 U.S. 46, 117-18 (1907),*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) the U.S. Supreme Court announced the doctrine of equitable apportionment of the benefits of interstate ***rivers***. Thereafter, the interstate compact emerged as the primary method to apportion interstate ***rivers***. See generally Felix Frankfurter & James M. Landis, The Compact Clause of the Constitution - A Study in Interstate Adjustments, 34 Yale L.J. 685 (1925). ***Colorado*** has entered into nine interstate compacts to apportion interstate ***rivers***. See [***Colo.*** *Rev. Stat. 37-61-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33S-00000-00&context=1516831) to [*37-69-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J34S-00000-00&context=1516831) (2001). [↑](#footnote-ref-3)
3. 3 Article VIII (H) of the Compact provides that it is the intent of the Compact that "enforcement of its terms shall be accomplished in general through the State agencies and officials charged with the administration of water rights." Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. VIII(H), 37-69-101 (2001), [*63 Stat. 145, 151.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-4)
4. 4 For an excellent description of the Arkansas ***River*** Basin in ***Colorado*** and Kansas see Bureau of Reclamation, U.S. Dep't of Interior, Report on the Upper Arkansas ***River*** Basin: ***Colorado***-Kansas 5-19 (1969) [hereinafter Bureau of Reclamation Report] (on file with the author and University of Denver Water Law Review). [↑](#footnote-ref-5)
5. 5 [*Kansas v.* ***Colorado****, 206 U.S. 46, 105 (1907).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-6)
6. 6 Bureau of Reclamation Report, supra note 4, at 1, 5. The U.S. Army Corps of Engineers has published detailed reports describing the Arkansas ***River*** in ***Colorado*** and Kansas. See, e.g., U.S. Army Corps of Engineers, Arkansas ***River*** and Tributaries above John Martin Dam, ***Colorado*** (1970); U.S. Army Corps of Engineers, Arkansas ***River*** and Tributaries: John Martin Dam, ***Colorado***, to Grand Bend, Kansas (1972) (on file with the author and University of Denver Water Law Review). [↑](#footnote-ref-7)
7. 7 Bureau of Reclamation Report, supra note 4, at 7. The 100th meridian, which runs through Dodge City, Kansas, forms the dividing line between the semiarid and the semi-humid regions of the country where irrigation is unnecessary for crop cultivation. See Walter Prescott Webb, The Great Plains 6, 353 (First Bison Book Printing 1981) (1931). [↑](#footnote-ref-8)
8. 8 Bureau of Reclamation Report, supra note 4, at 7; L.E. Dunlap et al., U.S. Geological Survey, Water-Supply Paper 2253, Geohydrology and Model Analysis of Stream-Aquifer System along the Arkansas ***River*** in Kearny and Finney Counties, Southwestern Kansas 15 (1985). [↑](#footnote-ref-9)
9. 9 Bureau of Reclamation Report, supra note 4, at 13, 34, 69; see also [***Colorado*** *v. Kansas, 320 U.S. 383, 396 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-10)
10. 10 Interim Report of Committee on Engineering Data and Studies to ***Colorado***-Kansas Arkansas ***River*** Compact Commission 10 (1947) [hereinafter Interim Report]. [↑](#footnote-ref-11)
11. 11 Id. [↑](#footnote-ref-12)
12. 12 David L. Pope, Report to the Arkansas ***River*** Compact Administration Regarding Article VIII(H) Investigation of Alleged Violations of the Arkansas ***River*** Compact tbl. 6D2 (1985). During an investigation by the Arkansas ***River*** Compact Administration in 1985, Kansas and ***Colorado*** developed adjusted flows of the Arkansas ***River*** at Canon City to exclude transmountain imports and to adjust the flows for some diversions around the stream flow gage at Canon City. [↑](#footnote-ref-13)
13. 13 Id. [↑](#footnote-ref-14)
14. 14 Comparison of Flow Data, Purgatoire ***River*** (***Colorado*** Exh. 836 in Kansas v. ***Colorado***, Orig. No. 105, United States Supreme Court). [↑](#footnote-ref-15)
15. 15 Id. [↑](#footnote-ref-16)
16. 16 Bureau of Reclamation Report, supra note 4, at 60. [↑](#footnote-ref-17)
17. 17 W.W. Wheeler & Associates & Woodward-Clyde & Associates, Vol. II Comprehensive Report, Water Legislation Investigations for the Arkansas ***River*** Basin in ***Colorado*** i (1968) [hereinafter Wheeler Report]. Shortages in ***Colorado*** during the late irrigation season are partially alleviated by reservoir releases, transmountain imports, and groundwater pumping. Bureau of Reclamation Report, supra note 4, at 60. [↑](#footnote-ref-18)
18. 18 Wheeler Report, supra note 17, at 5. [↑](#footnote-ref-19)
19. 19 Id. [↑](#footnote-ref-20)
20. 20 Id. [↑](#footnote-ref-21)
21. 21 Id. [↑](#footnote-ref-22)
22. 22 Id. [↑](#footnote-ref-23)
23. 23 Wheeler Report, supra note 17, at 5. [↑](#footnote-ref-24)
24. 24 Bureau of Reclamation Report, supra note 4, at 58. [↑](#footnote-ref-25)
25. 25 Id. [↑](#footnote-ref-26)
26. 26 Id. at 43. [↑](#footnote-ref-27)
27. 27 The term "Stateline" is spelled variously. We have adopted the spelling "Stateline," which is used in the Arkansas ***River*** Compact, [***Colo.*** *Rev. Stat. 37-69-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J34S-00000-00&context=1516831) (2001), [*63 Stat. 145.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-28)
28. 28 Interim Report, supra note 10, at 15. [↑](#footnote-ref-29)
29. 29 1 Arthur L. Littleworth, Special Master Report, Kansas v. ***Colorado***, No. 105 Original 54 (1994) [hereinafter First Report]. [↑](#footnote-ref-30)
30. 30 Id. at 53. [↑](#footnote-ref-31)
31. 31 Bureau of Reclamation, U.S. Dep't of Interior, Granada Reservoir Project Reconnaissance Report 3-4, 6 (1953) [hereinafter Granada Reservoir Project Reconnaissance Report]. [↑](#footnote-ref-32)
32. 32 Bureau of Reclamation Report, supra note 4, at 8. [↑](#footnote-ref-33)
33. 33 Id. [↑](#footnote-ref-34)
34. 34 Wheeler Report, supra note 17, at 8-9. [↑](#footnote-ref-35)
35. 35 [***Colorado*** *v. Kansas, 320 U.S. 383, 397 (1943);*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) Bureau of Reclamation Report, supra note 4, at 58; Wheeler Report, supra note 17, at 9. [↑](#footnote-ref-36)
36. 36 Bureau of Reclamation Report, supra note 4, at 89. [↑](#footnote-ref-37)
37. 37 1 First Report, supra note 29, at 37. The Special Master's report refers to twenty-three ditch systems in ***Colorado***, but this number includes systems no longer servicing irrigation needs. [↑](#footnote-ref-38)
38. 38 See generally Bureau of Reclamation Report, supra note 4, at 89-91, 93-96. [↑](#footnote-ref-39)
39. 39 Id. at 8, 58; 1 First Report, supra note 29, at 37. [↑](#footnote-ref-40)
40. 40 Bureau of Reclamation Report, supra note 4, at 8, 83-85; see 1 First Report, supra note 29, at 39, 48-49. [↑](#footnote-ref-41)
41. 41 1 First Report, supra note 29, at 49. [↑](#footnote-ref-42)
42. 42 Bureau of Reclamation Report, supra note 4, at 2. In 1962, the average annual flow of the Arkansas ***River*** at Pueblo was about 514,000 acre-feet per year, including transmountain imports. Id. at 58. However, not all of the water imported into the Arkansas ***River*** Basin is used in the Arkansas ***River*** Valley below Pueblo. 1 First Report, supra note 29, at 48-49. Deliveries of transmountain water below Pueblo have averaged approximately 120,000 acre-feet in recent years. Id. at 49. For a description of the Fryingpan-Arkansas Project, see Bureau of Reclamation Report, supra note 4, at 102-07. [↑](#footnote-ref-43)
43. 43 Bureau of Reclamation Report, supra note 4, at 39. [↑](#footnote-ref-44)
44. 44 2 First Report, supra note 29, at 204. [↑](#footnote-ref-45)
45. 45 Boyle Engineering Corporation, Arkansas ***River*** Basin Study, Estimates of Groundwater Pumping in the Arkansas ***River*** Basin, Pueblo Dam to Stateline tbl. A.1 (1990). [↑](#footnote-ref-46)
46. 46 Id. [↑](#footnote-ref-47)
47. 47 House Hearing, supra note 1, at 31 (statement by George S. Knapp). [↑](#footnote-ref-48)
48. 48 [***Colorado*** *v. Kansas, 320 U.S. 383, 399 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-49)
49. 49 2 First Report, supra note 29, at 221. The approximate location and extent of irrigated areas in the Arkansas ***River*** Basin in areas of ***Colorado*** and Kansas, west of Dodge City, at the time the states adopted the Compact are shown on a map appended to a report to Congress on the proposed Compact by Hans Kramer, Brigadier General, U.S. Army (retired). He was the United States representative to the commission that negotiated the Compact. H. Kramer, Report to the Congress of the United States on the Proposed Arkansas ***River*** Compact Between ***Colorado*** and Kansas reprinted in House Hearing, supra note 1, at 37 [hereinafter Kramer Report]. An updated version of the map is appended to the Special Master's First Report. [↑](#footnote-ref-50)
50. 50 Bureau of Reclamation Report, supra note 4, at 111-14; 1 First Report, supra note 29, at 38. The reason there are no ditches below Garden City is due to the physical conditions peculiar to the Arkansas ***River*** Basin in ***Colorado*** and Kansas. Kramer Report, supra note 49, at 34; see also House Hearing, supra note 1, at 47 (statements of General Hans Kramer and George S. Knapp describing the peculiar physical characteristics of the Arkansas ***River***). [↑](#footnote-ref-51)
51. 51 1 First Report, supra note 29, at 38; see also R. A. Barker et al., U.S. Geological Survey, Water-Supply Paper 2200, Analysis and Computer Simulation of Stream-Aquifer Hydrology, Arkansas ***River*** Valley, Southwestern Kansas 9 (1983). [↑](#footnote-ref-52)
52. 52 Bureau of Reclamation Report, supra note 4, at 40. [↑](#footnote-ref-53)
53. 53 [***Colorado*** *v. Kansas, 320 U.S. 383, 399 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-54)
54. 54 Bureau of Reclamation Report, supra note 4, at 130. [↑](#footnote-ref-55)
55. 55 Id. at 112, 130. [↑](#footnote-ref-56)
56. 56 Act of June 22, 1936, Pub. L. No. 738, ch. 688, [*49 Stat. 1570*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CBP-FXM0-01XN-S09H-00000-00&context=1516831) (codified as amended at [*33 U.S.C. 701*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0FN2-D6RV-H2VW-00000-00&context=1516831) (1970)); see Arkansas ***River*** Compact, ***Colo.*** Rev. Stat art. III(D) 37-69-101 (2001), [*63 Stat. 145, 146.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-57)
57. 57 Kramer Report, supra note 49, at 37. [↑](#footnote-ref-58)
58. 58 President Truman appointed General Kramer to participate in the Compact negotiations as representative of the United States. Minutes, Record of the First Meeting of the ***Colorado***-Kansas Compact Commission, Denver, ***Colo.*** 1-3 to 1-4 (January 7, 1946) (on file with the authors and University of Denver Water Law Review). [↑](#footnote-ref-59)
59. 59 Id. at 37-38. [↑](#footnote-ref-60)
60. 60 [***Colorado*** *v. Kansas, 320 U.S. 383 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-61)
61. 61 1 First Report, supra note 29, at 79. [↑](#footnote-ref-62)
62. 62 Congress passed an act consenting to the negotiation of a compact between ***Colorado*** and Kansas for an equitable apportionment of the waters of the Arkansas ***River*** in 1945. Act of April 19, 1945, Pub. L. No. 79-34, ***59 Stat. 53 (1945).*** [↑](#footnote-ref-63)
63. 63 See supra note 2. [↑](#footnote-ref-64)
64. 64 See Jerome C. Muys, Interstate Water Compacts: The Interstate Compact and Federal-Interstate Compact 11-12 (1971) for a discussion of apportionments made in interstate water compacts. [↑](#footnote-ref-65)
65. 65 Report and Submission by the Commissioners for ***Colorado*** of the Arkansas ***River*** Compact 8 (1948) [hereinafter Report of ***Colorado*** Commissioners]. [↑](#footnote-ref-66)
66. 66 Id. [↑](#footnote-ref-67)
67. 67 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. IV(D), 37-69-101 (2001), [*63 Stat. 145, 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-68)
68. 68 See 1 First Report, supra note 29, at 71.

    The compact makes no specific quantitative allocation of ***river*** flows, either in amounts or in terms of shares in the supply. It does not specify how flows had been divided and used in the past. Nor does it make specific reference to the pumping of tributary ground water from wells.

    Id. [↑](#footnote-ref-69)
69. 69 [*Kansas v.* ***Colorado****, 206 U.S. 46 (1907).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-70)
70. 70 [***Colorado*** *v. Kansas, 320 U.S. 383 (1943),*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) provides an excellent summary of the background of the Compact. See also 1 First Report, supra note 29, at 71-89.

    The meaning of the Arkansas ***River*** Compact cannot be fully understood apart from the rich history of controversy over the ***river***, and the early efforts to apportion its waters between the two states. Nor can its meaning be divorced from the views of the men in both states who fought the apportionment issues for more than a decade before taking seats on the compact commission to undertake formal compact negotiations.

    Id. at 71. [↑](#footnote-ref-71)
71. 71 [*Kansas v.* ***Colorado****, 206 U.S. 46, 47-48 (1907).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-72)
72. 72 [*Id. at 53-54.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-73)
73. 73 Id. [↑](#footnote-ref-74)
74. 74 [*Id. at 54.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-75)
75. 75 [*Id. at 113-14.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-76)
76. 76 [*Kansas v.* ***Colorado****, 206 U.S. 46, 114 (1907).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-77)
77. 77 [*Id. at 117.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-78)
78. 78 Jean Breitenstein served as attorney for the ***Colorado*** Water Conservation Board from approximately 1942 to 1954, when he was appointed as a United States District Judge for the District of ***Colorado***. He was later appointed to the Tenth Circuit Court of Appeals, and the Supreme Court acknowledged him as an expert in western water law. [*Texas v. New Mexico, 482 U.S. 124, 127 (1987).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H720-003B-450D-00000-00&context=1516831) [↑](#footnote-ref-79)
79. 79 Jean S. Breitenstein, The Law of the Arkansas ***River*** 9-10 (1954) (footnote omitted) [hereinafter Breitenstein Paper] (unpublished manuscript on file with The University of Denver Water Law Review). Breitenstein presented this paper at a meeting of the Arkansas, White and Red ***River*** Basins Inter-Agency Committee, which President Truman organized to conduct a comprehensive survey of water and land resources of the Arkansas, White, and Red ***River*** Basins, as authorized in the Flood Control Act of 1950, ch. 188, ***64 Stat. 170, 180-81, 205.*** [↑](#footnote-ref-80)
80. 80 See Report of ***Colorado*** Commissioners, supra note 65, at 6-10 (providing a short summary and analysis of each article). This report was submitted to the ***Colorado*** legislature prior to ratification of the Compact and was submitted to Congress before Congress granted its consent to the Compact. Thus, the report, like the report of the Kansas Commissioners, also submitted to Congress, is relevant to construe the Arkansas ***River*** Compact. See 3 First Report, supra note 29, at 345; see also [*Texas v. New Mexico, 462 U.S. 554, 568 n.14 (1983);*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-4SF0-003B-S40N-00000-00&context=1516831) [*Arizona v. California, 292 U.S. 341, 359-60 (1934).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BS80-003B-70WK-00000-00&context=1516831) [↑](#footnote-ref-81)
81. 81 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. IV(A), 37-69-101 (2001), [*63 Stat. 145, 146.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-82)
82. 82 Id. art. III(B), [*63 Stat. at 146;*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) see Report of ***Colorado*** Commissioners, supra note 65, at 7 ("Attention is particularly directed to paragraph B [of Article III], which excludes from consideration and apportionment any waters brought into the Arkansas ***River*** Basin from any other ***river*** basin."); see also House Hearing, supra note 1, at 15 (statement of Henry C. Vidal); id. at 28 (statement of Gail L. Ireland). [↑](#footnote-ref-83)
83. 83 Kramer Report, supra note 49, at 37. The Fryingpan-Arkansas Project is only one of a number of "transmountain" diversion projects that imports water into the Arkansas ***River*** Basin. See [*Vail Valley Consol. Water Dist. v. City of Aurora, 731 P.2d 665, 667 (****Colo.*** *1987)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-11J0-003D-954N-00000-00&context=1516831) (describing the Homestake Project, a joint development of the cities of Aurora and ***Colorado*** Springs); [*Twin Lakes Res. & Canal* ***Co****. v. City of Aspen, 568 P.2d 45, 46-47 (****Colo.*** *1977)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-1HR0-003D-92WS-00000-00&context=1516831) (describing the Independence Pass Transmountain Diversion System). [↑](#footnote-ref-84)
84. 84 Senate Hearing, supra note 1, at 11. [↑](#footnote-ref-85)
85. 85 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. IV(C)(3), 37-69-101 (2001), [*63 Stat. 145, 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-86)
86. 86 Senate Hearing, supra note 1, at 16. Commissioner Ireland further explained the respective benefits to water users upstream and downstream from the dam in his testimony before the House Committee:

    Now, when there is water in that reservoir, the direct flow water above the water reservoir is open and free. It has been a great benefit to the water users above the reservoir. By the same token, a controlled storage is a greater benefit to the water users below the reservoir.

    House Hearing, supra note 1, at 29 (statement of Gail L. Ireland). [↑](#footnote-ref-87)
87. 87 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. I, 37-69-101 (2001), [*63 Stat. 145.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-88)
88. 88 See Muys, supra note 64, at 9-10. But cf. id. at 9 (quoting ***Colorado*** ***River*** Compact, art. I) (comparison illustrating that other interstate water compacts set forth different purposes). [↑](#footnote-ref-89)
89. 89 See Minutes, Record of the Thirteenth Meeting of the ***Colorado***-Kansas ***River*** Compact Commission, Denver, ***Colo.*** 13-18 to 13-26 (June 30-July 3, 1948) (revised draft of the Compact dated February 6, 1948)). [↑](#footnote-ref-90)
90. 90 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. II, 37-69-101 (2001), [*63 Stat. 145, 145-46.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-91)
91. 91 The Supreme Court and General Kramer's report to Congress described the physical conditions peculiar to the Arkansas ***River*** Basin. See [*Kansas v.* ***Colorado****, 206 U.S. 46, 105-17 (1907);*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) Kramer Report, supra note 49, at 37. See also supra text accompanying notes 3-29. [↑](#footnote-ref-92)
92. 92 [***Colorado*** *v. Kansas, 320 U.S. 383, 396 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-93)
93. 93 Kramer Report, supra note 49, at 39. Additional information is contained in a report prepared by the engineering committee created by the Compact Commission, Interim Report of Committee on Engineering Data and Studies to ***Colorado***-Kansas Arkansas ***River*** Compact Commission (1947), and a report on the Arkansas ***River*** Basin below Garden City prepared for the Compact Commission by George Knapp, a Kansas Commissioner and the Kansas Chief Engineer. Minutes, Record of the Fifth Meeting ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Topeka, Kan. 5-39 to 5-42 (Oct. 23-24, 1946) (on file with authors and University of Denver Water Law Review). [↑](#footnote-ref-94)
94. 94 1 First Report, supra note 29, at 55. [↑](#footnote-ref-95)
95. 95 Chris Madson, The Death of a ***River***, Audubon Mag., May 1982, at 70, 74 (quoting Bob Jesse, Division Engineer for the State Division of Water Resources in southeastern ***Colorado***). [↑](#footnote-ref-96)
96. 96 [***Colorado*** *v. Kansas, 320 U.S. 383 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-97)
97. 97 [*Kansas v.* ***Colorado****, 206 U.S. 46 (1907).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-98)
98. 98 [***Colorado*** *v. Kansas, 320 U.S. 383, 388 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-99)
99. 99 [*Id. at 389.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-100)
100. 100 [*Id. at 390.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-101)
101. 101 Id. [↑](#footnote-ref-102)
102. 102 [*Id. at 391.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-103)
103. 103 [***Colorado*** *v. Kansas, 320 U.S. 383, 391 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-104)
104. 104 Id. [↑](#footnote-ref-105)
105. 105 [*Id. at 391-92.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-106)
106. 106 [*Id. at 392*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) (footnotes omitted). [↑](#footnote-ref-107)
107. 107 [*Id. at 392-93.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-108)
108. 108 [***Colorado*** *v. Kansas, 320 U.S. 383, 393 (1943)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) (citing [*Kansas v.* ***Colorado****, 206 U.S. 46, 100 (1907)).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B060-003B-H2B5-00000-00&context=1516831) [↑](#footnote-ref-109)
109. 109 Id. [↑](#footnote-ref-110)
110. 110 Id. [↑](#footnote-ref-111)
111. 111 Id. at 393-94 (footnote omitted). [↑](#footnote-ref-112)
112. 112 Id. at 394. [↑](#footnote-ref-113)
113. 113 [***Colorado*** *v. Kansas, 320 U.S. 383, 394 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-114)
114. 114 Id. [↑](#footnote-ref-115)
115. 115 Id. [↑](#footnote-ref-116)
116. 116 Id. (citation omitted). Despite similar facts, Kansas still sought to enforce the Arkansas ***River*** Compact in [*Kansas v.* ***Colorado****, 514 U.S. 673, 687-89 (1995).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3D-0XY0-003B-R3M8-00000-00&context=1516831) After ***Colorado*** entered into a compact and after approval by Congress, the Court placed the burden on ***Colorado*** to prove the elements of the affirmative defense of laches, including that Kansas had failed to exercise due diligence in asserting its claim. Id. On the other hand, Kansas' delay in bringing suit was considered in whether an award of prejudgment interest on damages awarded for violation of the Compact was appropriate. [*Kansas v.* ***Colorado****, 533 U.S. 1 (2001).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:437X-DYJ0-004C-0033-00000-00&context=1516831) [↑](#footnote-ref-117)
117. 117 [***Colorado*** *v. Kansas, 320 U.S. 383, 394-95 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-118)
118. 118 [*Id. at 395.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-119)
119. 119 [*Id. at 396.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-120)
120. 120 Id. [↑](#footnote-ref-121)
121. 121 Id. [↑](#footnote-ref-122)
122. 122 [***Colorado*** *v. Kansas, 320 U.S. 383, 396-97 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-123)
123. 123 [*Id. at 397.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-124)
124. 124 Id. [↑](#footnote-ref-125)
125. 125 Id. [↑](#footnote-ref-126)
126. 126 [*Id. at 398.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-127)
127. 127 [***Colorado*** *v. Kansas, 320 U.S. 383, 398 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-128)
128. 128 [*Id. at 399.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-129)
129. 129 Id. [↑](#footnote-ref-130)
130. 130 [*Id. at 400.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-131)
131. 131 Id. [↑](#footnote-ref-132)
132. 132 [***Colorado*** *v. Kansas, 320 U.S. 383, 400 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-133)
133. 133 See supra textual description of the John Martin Reservoir accompanying notes 50-54. [↑](#footnote-ref-134)
134. 134 Kramer Report, supra note 49, at 37. [↑](#footnote-ref-135)
135. 135 Id. at 36. [↑](#footnote-ref-136)
136. 136 1 First Report, supra note 29, at 87. [↑](#footnote-ref-137)
137. 137 See Douglas R. Littlefield, Ph.D., The History of the Arkansas ***River*** Compact 66-73 (1990) (Kansas Exh. 129 in Kansas v. ***Colorado***, Orig. No. 105, United States Supreme Court) (on file with the University of Denver Water Law Review). [↑](#footnote-ref-138)
138. 138 Charles L. Patterson, Plan for Operation of Caddoa Project and Administration of Rights in Arkansas ***River*** (1944). [↑](#footnote-ref-139)
139. 139 Id. at 15-16. [↑](#footnote-ref-140)
140. 140 Id. at 16. [↑](#footnote-ref-141)
141. 141 Id. [↑](#footnote-ref-142)
142. 142 Id. at 18. [↑](#footnote-ref-143)
143. 143 Patterson, supra note 138, at 18. [↑](#footnote-ref-144)
144. 144 Id. at 18-19. [↑](#footnote-ref-145)
145. 145 Id. at 20. [↑](#footnote-ref-146)
146. 146 Id. at 19-33. [↑](#footnote-ref-147)
147. 147 See Gail L. Ireland, Statement Re: Interstate Relations Under Plan of Operating of Caddoa Reservoir and Administration of Rights in Arkansas ***River*** 1 (1944) (Kansas Exh. 222 in Kansas v. ***Colorado***, No. 105, Original). [↑](#footnote-ref-148)
148. 148 Id. (cover letter from Gail Ireland to A. B. Mitchell). [↑](#footnote-ref-149)
149. 149 Minutes, Record of the Second Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Topeka, Kan. 2-3 (Mar. 25-26, 1946) (on file with authors and the University of Denver Water Law Review). [↑](#footnote-ref-150)
150. 150 Id.; see also Minutes, Record of the Third Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 3-3 (July 1-2, 1946) (on file with authors and the University of Denver Water Law Review); see also Minutes, Record of the Fourth Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 4-16 to 4-18 (Aug. 28-29, 1946) (on file with authors and the University of Denver Water Law Review) (letter from District Engineer of the Corps of Engineers to the Governor of ***Colorado*** noting "continuing critical food situation" and urging appointment of negotiators to attempt agreement on temporary storage pending permanent compact); id. at 4-20 (resolution of Compact Commission recommending appointment of H. B. Mendenhall and W. E. Leavitt to negotiate interim executive agreement). [↑](#footnote-ref-151)
151. 151 Minutes, Record of the Fifth Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Topeka, Kan. 5-43 (Oct. 23-24, 1946) (on file with authors and the University of Denver Water Law Review). [↑](#footnote-ref-152)
152. 152 Minutes, Record of the Sixth Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 6-41 to 6-42 (Nov. 25-26, 1946) (on file with authors and the University of Denver Water Law Review); see also Minutes, Record of the Seventh Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Topeka, Kan. 7-22 (Jan. 22-23, 1947) (on file with authors and the University of Denver Water Law Review). [↑](#footnote-ref-153)
153. 153 Report of ***Colorado*** Commissioners, supra note 65, at 6. [↑](#footnote-ref-154)
154. 154 See Senate Hearing, supra note 1, at 17 (statement of Gail L. Ireland) (the "system of trying to keep books [was] practically impossible [because] no two people could just exactly agree on how much water they were talking about from time to time."). [↑](#footnote-ref-155)
155. 155 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V, 37-69-101 (2001), [*63 Stat. 145, 147-49.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-156)
156. 156 Kramer Report, supra note 49, at 38. [↑](#footnote-ref-157)
157. 157 1 First Report, supra note 29, at 75. [↑](#footnote-ref-158)
158. 158 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(G), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-159)
159. 159 Id. art. V(A) and (B), [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-160)
160. 160 Id. [↑](#footnote-ref-161)
161. 161 Id. [↑](#footnote-ref-162)
162. 162 Id. art. III(H), [*63 Stat. at 146.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-163)
163. 163 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(B), 37-69-101, [*63 Stat. 145, 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-164)
164. 164 Id. art. V(A), [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-165)
165. 165 Id. art. V(C), [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-166)
166. 166 Id. [↑](#footnote-ref-167)
167. 167 Id. [↑](#footnote-ref-168)
168. 168 Report of ***Colorado*** Commissioners, supra note 65, at 7-8. [↑](#footnote-ref-169)
169. 169 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(E)(1), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-170)
170. 170 Id. art. V(B), [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-171)
171. 171 Id. art. V(E)(1), [*63 Stat. at 147-48.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-172)
172. 172 Id. art. V(E)(2), [*63 Stat. at 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-173)
173. 173 Id. art. V(E)(3), [*63 Stat. at 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-174)
174. 174 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. III(C), 37-69-101 (2001), [*63 Stat. 145, 146.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) Article III(C) also states that the flow as determined at the gauging stations located at or near the Stateline "shall be deemed to be the actual Stateline flow." Id. [↑](#footnote-ref-175)
175. 175 See [*Frontier Ditch* ***Co****. v. Southeastern* ***Colo.*** *Water Conservancy Dist., 761 P.2d 1117 (****Colo.*** *1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-0Y20-003D-94NH-00000-00&context=1516831) (discussing the Frontier Ditch and article VI(B) of the Compact). [↑](#footnote-ref-176)
176. 176 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(E)(4), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-177)
177. 177 Rules and Regulations of Arkansas ***River*** Compact Administration Rule 2(a)(4) (1950) [hereinafter ARCA Rules and Regulations]. Article VIII(B)(1) of the Compact authorizes the Administration to adopt rules and regulations. The Administration adopted Rules and Regulations effective April 15, 1950, which have been amended from time to time. [↑](#footnote-ref-178)
178. 178 Id. [↑](#footnote-ref-179)
179. 179 The Administration must also anticipate times when John Martin Reservoir becomes empty and provide notice to the ***Colorado*** State Engineer "for a change of administration so that all ***Colorado*** water users will switch back to the decreed priority basis as though the Reservoir had never been constructed." Report of ***Colorado*** Commissioners, supra note 65, at 9; see Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(F), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-180)
180. 180 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(E)(5), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-181)
181. 181 Kramer Report, supra note 49, at 38. [↑](#footnote-ref-182)
182. 182 Senate Hearing, supra note 1 at, 17. [↑](#footnote-ref-183)
183. 183 Kramer Report, supra note 49, at 38. [↑](#footnote-ref-184)
184. 184 Minutes, Record of the Fourteenth Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 14-80 (July 29-31, 1948) (on file with authors and the University of Denver Water Law Review). [↑](#footnote-ref-185)
185. 185 Id. at 14-81. [↑](#footnote-ref-186)
186. 186 Id. at 14-82. [↑](#footnote-ref-187)
187. 187 2 First Report, supra note 29, at 175. [↑](#footnote-ref-188)
188. 188 Id. at 47. [↑](#footnote-ref-189)
189. 189 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(E)(6), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-190)
190. 190 The Corps of Engineers actually operates John Martin Reservoir to store and release water. Id. at art. IV(C)(1), [*63 Stat. at 146.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) The Compact recognizes that the reservoir operate for flood control storage as well as conservation storage, and that releases from flood control storage be made at times and rates determined by the Corps of Engineers "without regard to ditch diversion capacities or requirements in either or both States." Id. at art. IV(C)(2), [*63 Stat. at 146-47.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) Further, the Compact recognizes that maintenance may disrupt storage and releases. Id. at art. IV(C)(3). [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) While the Corps of Engineers actually operates the dam and reservoir, the Compact provides that the Chief of Engineers is authorized to operate the conservation features of the reservoir "in a manner conforming to such Compact with such exceptions as he and the Administration created pursuant to the Compact may jointly approve." Id. at art. IX(A), [*63 Stat. at 150.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) Thus, calls for releases are transmitted to the authorized representative of the Administration, who in turn requests the Corps of Engineers "to make releases and reduction in releases of quantities of water required to meet such calls." ARCA Rules and Regulations, supra note 177, Rule 2(a)(3). [↑](#footnote-ref-191)
191. 191 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(D), 37-69-101 (2001), [*63 Stat. 145, 147-48.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-192)
192. 192 See id. art. IV(C)(3), [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-193)
193. 193 See House Hearing, supra note 1, at 29 (statement of Gail L. Ireland) ("This Compact also makes it possible now for water users above the reservoir who heretofore were restricted to the use of that water based on priority of right to ignore senior rights below which previously they could not do if they had a junior decree."). [↑](#footnote-ref-194)
194. 194 Id. [↑](#footnote-ref-195)
195. 195 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(F), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) This article also specifies a procedure by which the Administration is to notify the State Engineer of ***Colorado*** that ***Colorado*** shall administer the decreed rights of water users in ***Colorado*** Water District 67 as against each other and all rights now or hereafter acquired on the basis of relative priorities. Id. [↑](#footnote-ref-196)
196. 196 Id. art. V(F), [*63 Stat. at 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-197)
197. 197 Kramer Report, supra note 49, at 38. [↑](#footnote-ref-198)
198. 198 Report of ***Colorado*** Commissioners, supra note 65, at 9. [↑](#footnote-ref-199)
199. 199 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(G), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-200)
200. 200 Id. [↑](#footnote-ref-201)
201. 201 See supra text accompanying notes 91-127. [↑](#footnote-ref-202)
202. 202 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(H), 37-69-101 (2001), [*63 Stat. 145, 148-49;*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) Report of the ***Colorado*** Commissioners, supra note 65, at 9. The ***Colorado*** Commissioners emphasized, however, that such a finding was not conclusive and only constitutes prima facie evidence, and that the proper court could still pass on the question after proper notice to all parties including the Administration. Id.; see Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. VIII(I), 37-69-101 (2001), [*63 Stat. 145, 151*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) ("findings of fact made by the Administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of the facts found."). [↑](#footnote-ref-203)
203. 203 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(E)(3), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-204)
204. 204 Note that this limitation does not apply to ***Colorado*** ditches upstream of John Martin Reservoir; however, future beneficial development of the Arkansas ***River*** Basin is subject to Article IV(D) of the Compact. [↑](#footnote-ref-205)
205. 205 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(H), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-206)
206. 206 House Hearing, supra note 1, at 32. [↑](#footnote-ref-207)
207. 207 Id. [↑](#footnote-ref-208)
208. 208 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. V(H), 37-69-101 (2001), [*63 Stat. 145, 148.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-209)
209. 209 [*Id., 63 Stat. at 148-49.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-210)
210. 210 Id. art. IV(D), [*63 Stat. at 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-211)
211. 211 Id. [↑](#footnote-ref-212)
212. 212 1 First Report, supra note 29, at 257 & n. 99. [↑](#footnote-ref-213)
213. 213 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. IV(D), 37-69-101 (2001), [*63 Stat. 145, 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-214)
214. 214 2 First Report, supra note 29, at 190-200; see also [*Kansas v.* ***Colorado****, 514 U.S. 673, 689-91 (1995).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3D-0XY0-003B-R3M8-00000-00&context=1516831) [↑](#footnote-ref-215)
215. 215 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. IV(D), 37-69-101 (2001), [*63 Stat. 145, 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-216)
216. 216 See 1 First Report, supra note 29, at 97-102 for a detailed discussion of the terms "materially depleted" and "protection of existing uses." [↑](#footnote-ref-217)
217. 217 Kramer Report, supra note 49, at 41. [↑](#footnote-ref-218)
218. 218 Id. [↑](#footnote-ref-219)
219. 219 Report of ***Colorado*** Commissioners, supra note 65, at 7-8. [↑](#footnote-ref-220)
220. 220 [***Colorado*** *v. Kansas, 320 U.S. 383, 393-99 (1943).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3XB0-003B-71TC-00000-00&context=1516831) [↑](#footnote-ref-221)
221. 221 Minutes, Record of the Seventeenth Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 17-32 to 17-33 (Dec. 13-14, 1948) (on file with authors and the University of Denver Water Law Review). The Commissioners agreed that a long term average would be a reasonable basis to determine whether a future project had materially depleted the waters of the Arkansas ***River***. See Minutes, Record of the Thirteenth Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 13-65 to 13-71 (June 30-July 3, 1948) (on file with authors and the University of Denver Water Law Review); see also 1 First Report, supra note 29, at 97-99. [↑](#footnote-ref-222)
222. 222 See Granada Reservoir Project Reconnaissance Report, supra note 31, at 3-4, 6. [↑](#footnote-ref-223)
223. 223 Id. at 3-4. [↑](#footnote-ref-224)
224. 224 Arkansas-White-Red Basins Inter-Agency Committee, Part II, Section 6, Irrigation and Reclamation 37-38, 50 (1955). [↑](#footnote-ref-225)
225. 225 Arkansas ***River*** Compact, ***Colo.*** Rev. Stat. art. IV(D), 37-69-101 (2001), [*63 Stat. 145, 147.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S06T-00000-00&context=1516831) [↑](#footnote-ref-226)
226. 226 See 2 First Report, supra note 29, at 226. [↑](#footnote-ref-227)
227. 227 Kramer Report, supra note 49, at 38. See also Senate Hearing, supra note 1, at 16 ("… users below [the dam] having the senior rights, now have the benefit of a controlled storage, which is much more efficient and valuable") (statement of Gail L. Ireland). [↑](#footnote-ref-228)
228. 228 Report of ***Colorado*** Commissioners, supra note 65, at 8. [↑](#footnote-ref-229)
229. 229 Senate Hearing, supra note 1, at 15. [↑](#footnote-ref-230)
230. 230 Kramer Report, supra note 49, at 38; see 1 First Report, supra note 29, at 175.

     Under the common pool concept provided in the compact, to receive its fully allowable share, Kansas had to call for water whenever ***Colorado*** did, whether or not Kansas farmers then needed the water. There is evidence that in the early years Kansas did not always do so, and thus received less than 40 percent.

     Id. [↑](#footnote-ref-231)
231. 231 See 1 First Report, supra note 29, at 46-47. [↑](#footnote-ref-232)
232. 232 See 2 First Report, supra note 29, at 46-48, 173-77 for a description of the 1980 Operating Plan. [↑](#footnote-ref-233)
233. 233 See generally [*People ex rel. Simpson v. Highland Irrigation* ***Co****., 917 P.2d 1242, 1245 (****Colo.*** *1996);*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX3-YX20-003D-91KF-00000-00&context=1516831) [*People ex rel. Simpson v. Highland Irrigation* ***Co****., 893 P.2d 122, 124 (****Colo.*** *1995).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-0290-003D-92SK-00000-00&context=1516831) [↑](#footnote-ref-234)
234. 234 2 First Report, supra note 29, at 174. [↑](#footnote-ref-235)
235. 235 Id. at 172, 175-81. [↑](#footnote-ref-236)
236. 236 Minutes, Record of the Third Meeting of the ***Colorado***-Kansas Arkansas ***River*** Compact Commission, Denver, ***Colo.*** 3-3 (July 1-2, 1946) (on file with authors and the University of Denver Water Law Review). [↑](#footnote-ref-237)
237. 237 Id. at 3-4. [↑](#footnote-ref-238)
238. 238 Memorandum From Donald C. Bondurant, to General Hans Kramer 3-4 (April 12, 1946) (***Colorado*** Exh. 646 in Kansas v. ***Colorado***, No. 105, Orig., United States Supreme Court). [↑](#footnote-ref-239)
239. 239 Id. at 3. [↑](#footnote-ref-240)
240. 240 Letter from General Hans Kramer, Chairman, Arkansas ***River*** Compact Administration, to Colonel Charles H. McNutt, District Engineer, U.S. Army Corps of Engineers, 2 (April 10, 1951) (***Colorado*** Exh. 57 in Kansas v. ***Colorado***, No. 105, Orig. United States Supreme Court). [↑](#footnote-ref-241)
241. 241 Kramer Report, supra note 49, at 38. [↑](#footnote-ref-242)