

FOUNDED IN 1898 ★ VOL. 108, NO. 36 ★ DENVER, CO SEPT. 7, 2007 ©

# Water crisis looms on the Eastern Plains

BY JOHN SCHROYER  
THE COLORADO STATESMAN

Three and a half billion dollars. That's how much is at stake. That's how much the seven counties within the borders of the Republican River Valley Basin in eastern Colorado produce in agricultural revenues for the state each year. That's how much the state could lose, if worst comes to worst.

That's just the financial aspect, however. There's no yardstick for the actual potential impact on Rep. Cory Gardner's rural hometown of Yuma or the surrounding 7,700 square miles that make up the basin, where thousands of irrigation wells are in danger of being shut off at the end of the year.

"I'm scared to death," Gardner, a Republican, said flat-out. "I'm going to lose friends and family over this."

The reason Gardner's been losing sleep is a 1942 tri-state water contract between Colorado, Kansas, and Nebraska called the Republican River Valley Compact. Sixty-five years ago, Colorado agreed to deliver a certain percentage of the stream flow from the Republican River to both Nebraska and Kansas for crop irrigation. Everything went fine for half a century until, in 1998, Kansas sued both states, claiming it hadn't been receiving its fair share. The case was resolved four years later in a settlement signed by all three states. The problem is that since then, Colorado has shorted Kansas about 11,000 acre-feet (one acre-foot is equal to roughly 326,000 gallons) per year. And Kansas isn't happy.

At an Aug. 15 meeting this year, Kansas Attorney General Paul Morrison warned both Nebraska and Colorado officials that he was ready to "take measures to bring both states into compliance" and cautioned that

the states would see "decisive action soon," according to officials present at the meeting. Morrison's public information officer Ashley Anstaett confirmed Morrison's statement, but said Kansas is not yet certain they will file suit, and that the state is checking out its options.

If Kansas does file suit, however, it's possible that a court could force every single irrigation well in both Nebraska and Colorado to shut down immediately in order to bring both states into full compliance. That's what has Gardner worried.

"To me, that sounds like they've been gearing up for a lawsuit," Gardner said apprehensively.

If that happens, Gardner warned, the result would likely cripple the region.

"The worst-case scenario is that this area loses irrigated agriculture completely," Gardner said.

On the eastern plains, roughly one out of three jobs is related to agriculture production, and if irrigation ceases, there's no telling how bad it could get for Eastern Colorado.

A lawsuit from Kansas certainly seems likely if you look at the numbers. The compact follows a five-year rolling average, and the deadline for compliance is the end of the calendar year of 2007. Not including this year, Colorado owes Kansas an accumulated water debt of 44,619 acre-feet. Nebraska, meanwhile, owes Kansas an accumulated 143,809 acre-feet. And though much of the problem began with the drought that started in the late 1990s, some say the real blame lies at Nebraska's doorstep.

"Nebraska is [most] of the problem, but we are going to suffer because of Nebraska's significant overuse of water. Colorado has been really responsible,

and Nebraska wasn't, and now we're stuck in a problem that's mostly of their creation," said Sen. Greg Brophy, R-Wray.

One of the reasons the original 1998 lawsuit was filed, Brophy pointed out, was because of a boom in the drilling of irrigation wells, especially in Nebraska. In the Republican River Valley, that meant farmers were drawing from the Ogallala Aquifer (also known as the High Plains Aquifer) directly, instead of from the Republican River. Kansas, the plaintiff in the suit, argued that groundwater drilling was affecting the river's flow and therefore, under the provisions of the 1942 compact, they were entitled to a percentage of the groundwater. The U.S. Supreme Court agreed with them.

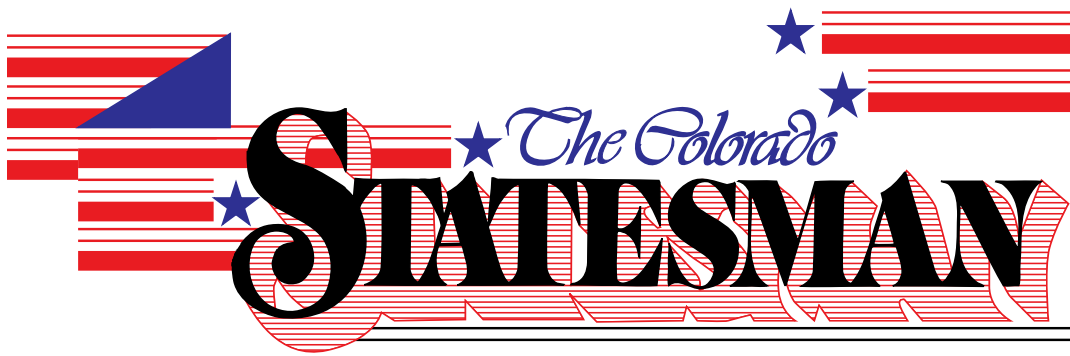
"That decision changed everything," said Ken Knox, the chief deputy state engineer of Colorado. Knox has been working with residents of the seven affected eastern counties (Kit Carson, Lincoln, Logan, Phillips, Sedgwick, Washington, and Yuma) to try and work out a solution that brings as little pain to the region as possible.

## The options

At this point, Knox said, there's no way Colorado will be in full compliance by the end of the year. What he and others are hoping is that since Colorado can demonstrate that it has made efforts to curb water use, both Kansas and the courts will be inclined to let the state run its own course instead of forcing all of the basin's 3,967 wells to shut down.

"What [Kansas is] chagrined about is Nebraska doesn't have a concrete plan. Colorado's been working on this since the settlement in 2002. We're a bit of an afterthought. They're going

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## ...Rough waters ahead for the Republican River Basin

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after Nebraska,” Knox said.

For one thing, Colorado has instituted a program called Conservation Reserve Enhancement Program (CREP), designed to reimburse farmers for voluntarily shutting down wells. So far, under CREP, the state has reclaimed almost 30,000 acres, and an additional 30,000 are slated for retirement as well in the coming months. That’s out of a total 580,000 acres in the basin, and equates to roughly 440 wells being shut down. That’s a little over ten percent of the wells in operation.

But whether that ten percent will be enough to bring Colorado into compliance for 2007 (if not the whole five-year average) is almost impossible to predict. For instance, it depends on whether enough farmers along the river will agree to sacrifice their farms so others can continue to water their crops.

Mark Sponsler, the CEO of Colorado Corn, said one of the issues with CREP is many farmers feel like they’re simply not being given a fair shake.

“I’ve heard [CREP] characterized as roughly half of what would be considered a realistic price,” Sponsler said.

Yuma County Commissioner Trent Bushner added, “The majority of people took [CREP] either because they were tired of farming or they had marginal wells that weren’t highly productive, so it looked like a pretty good deal.”

With corn at a record \$4 a bushel these days, many farmers will look at the numbers and simply walk away, knowing they’ll be able to rake in profits several times what the government is offering, which is dependent on proximity to the river. Under the 15-year contracts offered by CREP, farms within one mile of the river are

offered \$2,615 per acre, within two miles are offered \$2,295, within four miles \$2,130, and over four miles \$1,890.

Also on the way are formal rules from the state engineer’s office, authored in part by Knox, which are expected to order the shutting down of a minimum number of wells. The rules, said Knox, should be finalized before the end of September. Then there will be a 30-day public comment period, at which point the rules will be revisited and revamped if necessary before becoming permanent.

It’s likely, however, that the rules will face a court challenge from at least one farmer (and perhaps a whole group), which just adds another wrench to the works and would likely delay bringing the state into compliance even more.

Another option for relief that many area residents, including Gardner and Brophy, are pushing is the draining of Bonny Reservoir in Kit Carson County. The reservoir, with a capacity of roughly 50,000 acre-feet, is only holding about 5,000 acre-feet. That’s almost half the amount Colorado was out of compliance by in 2006. The two lawmakers say that if the state were to drain Bonny reservoir this year, not only would it slash Colorado’s debt to Kansas, it would also add thousands of acre-feet for irrigation. Each year, thousands of acre-feet of water evaporate from Bonny, and those acre-feet are counted against Colorado’s total allocation under the compact. With the reservoir emptied, those acre-feet would be freed up for irrigating crops.

Bonny’s likely to stay just as it is, however, said Alexandra Davis, an assistant director of the Department of Natural Resources. Davis works primarily with water matters, and said the big problem with Bonny is that the fed-

eral government subsidized its establishment as a recreation area and wildlife refuge. If Colorado did drain it, the federal government would likely sue for restitution to the tune of \$1.5 to \$2 million, Davis said.

“If draining Bonny could actually get us into compliance, it would make sense. But it doesn’t get us into compliance. Even if it’s drained, wells will still have to be curtailed,” Davis added.

She also said since Bonny is expected to be naturally dry within the next few years, the consumptive use Bonny represents will also cease. And there are also concerns for the fish and bird species in the area that depend on Bonny, she said.

None of that, however, matters much to farmers.

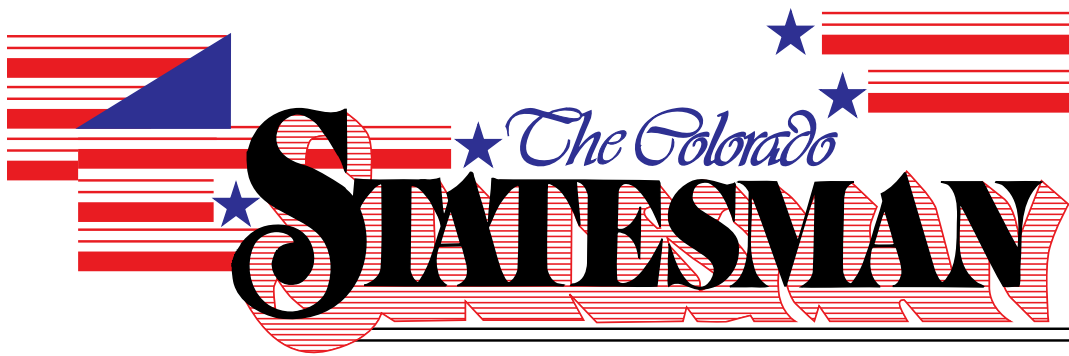
“I’m willing to take that gamble. I’m willing to tell the federal government, do you value buildings over people?” Gardner said about the possibility of a lawsuit.

Brophy added that the math doesn’t make much sense either, and said \$2 million would be a small price to pay, even if the federal government won in court.

“Under today’s prices, you’re looking at almost \$100,000 in gross revenue lost for each well that’s shut off. So if you shut off a couple hundred wells, that’s like \$20 million in gross revenue,” Brophy calculated. “If I have to choose between fish and farmers, I’m going to choose the farmers.”

There’s also been talk of constructing a pipeline from further south in Colorado back up to the headwaters of the Republican in order to boost the river’s capacity. That option is still undergoing a feasibility study, however, and it’s unlikely that such pipeline would be operational until late next year.

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## ...Intrastate water fight could leave Colorado high and dry

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### Kansas and Nebraska

In situations like this, one thing that's certain is there will be no shortage of finger-pointing. In the case of the Republican River Valley, however, much of the blame game has gone on between Kansas and its northern neighbor, with Colorado engaged only as a third wheel.

"Based on the rhetoric coming from Kansas officials, it sounds like they're hell bent on extracting x-number of pounds of flesh from us," commented Don Adams, the head of Nebraskans First, a farmers' advocacy group based in Lincoln. "The rubber is starting to hit the road, and Kansas is really being a little excessive in their demands."

Adams points to the practice of terracing in Kansas, which is a method of landscaping designed to retain as much runoff water as possible. He says thanks to terracing, Kansas isn't hurting nearly as much as they say they are.

"Therein is the lion's share of the problem," Adams asserted. "Kansas, through their terracing, is preventing the natural flow of the river... People want to know where Kansas's water is. Well, it's in Kansas."

Adams says if Kansas has its way, every one of Nebraska's 18,000 irrigation wells will be shut off completely and Nebraskan communities "devastated."

"It would be a vast wasteland. Maybe Kansas wants that. I don't know," Adams said.

Kansans, however, point to "unconstrained well development" in Nebraska as the root source of the problem, and say terracing is irrelevant to the strictures of the compact.

"The original (1998) lawsuit was filed because of a history of shortages to Kansas in the past and overuse by the other states. A lot of our focus initially was on Nebraska," said David Barfield, the chief engineer for the Kansas

Department of Agriculture's water division. He said the state's concern over Nebraska's drilling and water use, which to them had run amok, was not eased after the 2002 settlement, and pointed to consistently large out-of-compliance numbers for Nebraska.

"We see a pattern there that obviously disturbs us," Barfield said. He hinted that he sees a lawsuit on the horizon simply because Nebraska hasn't demonstrated any good-faith measures to come into compliance with the compact.

"History has told us that they haven't [made an effort]," Barfield stated. He agreed that Colorado's in better legal shape than Nebraska at this point, precisely because of efforts like CREP that have been made, whereas Nebraska "seems to be in a bit of disarray at this point."

Also, while Colorado's out-of-compliance numbers have been going down since 2003, Nebraska's have gone up. Four years ago, Colorado was out of compliance by 12,000 acre-feet, but in 2006 that number was down to 10,000. Nebraska, for the same timespan, went from 25,000 acre-feet out of compliance to 39,000. Simultaneously, however, Colorado's allocated acre-feet have stayed about the same while Nebraska's allotment has plummeted, from 227,000 acre-feet in 2003 to 189,000 in 2006.

### The people

Deni Coryell is a graduate student at the University of Colorado at Denver, working on her Master's degree in political science. She's also the Community Development Director of Burlington, a small farming town of 4,000 in Kit Carson County. Her father has been a water commissioner in the county since she was 15, and now she's doing her Master's thesis on the Republican River Valley situation.

"Even if one well is shut down, we're going to feel a dramatic impact,"

Coryell said. "That's a loss to our schools. That's a loss to our health care system. That's a loss to our local clothing stores, to our grocery stores. The chain reaction will dramatically effect the entire community."

She's one of the proponents of draining Bonny Reservoir, because, as Brophy also pointed out, "The fact of the matter is, the amount we'd have to pay to the federal government is far less than the amount we'd have to pay for a loss of wells."

The simple fact is that agriculture, to most eastern plains communities, is the "heartthrob" of the region, said state Agriculture Commissioner John Stulp.

"It's a question of how much damage we're going to have," Stulp said. "I don't think anyone's going to come out of this unscathed."

Sponsler, of Colorado Corn, said because agriculture drives the economy the way it does, a potential impact of \$3.5 billion should be multiplied by an economic factor of six, to get an idea of the true impact.

"The scariest part is that it's really out of our hands," Sponsler said.

U.S. Sen. Ken Salazar, D-Manassa, said he's been trying to find out if there are perhaps other revenue streams that could provide additional relief for the region.

"There may be some other sources of funding. I'm trying to shake the trees to do everything we can to help out," Salazar said.

The problem isn't going anywhere, however. It needs to be dealt with, and quick, Brophy concluded.

"I care deeply about a lot of things, but this one absolutely has to be on the front burner," said Brophy. "The situation is deadly serious. The ability to use water out of the Ogallala aquifer is vital to the economic viability to this area of Colorado."