

2012 Kansas Statutes

82a-529. Kansas-Nebraska Big Blue River Compact. The legislature hereby ratifies the compact designated as the "Kansas-Nebraska Big Blue River Compact" between the states of Nebraska and Kansas signed in the city of Lincoln, state of Nebraska on the 25th day of January, 1971 by Dan S. Jones, Jr., as representative for the state of Nebraska, Keith S. Krause, as representative for the state of Kansas and Elmo W. McClendon, as representative of the United States of America, which said compact is as follows:

KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

PREAMBLE

The state of Kansas and the state of Nebraska, acting through their duly authorized compact representatives, Keith S. Krause for the state of Kansas and Dan S. Jones, Jr., for the state of Nebraska, after negotiations participated in by Elmo W. McClendon, appointed by the president as the representative of the United States of America, and in accordance with the consent to such negotiations granted by an act of congress of the United States of America, approved June 3, 1960, Public Law 489, 86th congress, 2nd session, have agreed that the major purposes of this compact concerning the waters of the Big Blue river and its tributaries are:

- A. To promote interstate comity between the states of Nebraska and Kansas;
- B. To achieve an equitable apportionment of the waters of the Big Blue river basin between the two states and to promote orderly development thereof; and
- C. To encourage continuation of the active pollution-abatement programs in each of the two states and to seek further reduction in both natural and man-made pollution of the waters of the Big Blue river basin.

To accomplish these purposes, the said states have agreed as set forth in the following articles.

Article I—Definitions

As used in this compact:

- 1.1 The term "state" shall mean either state signatory hereto, and it shall be construed to include any person, entity, or agency of either state who, by reason of official responsibility or by designation of the governor of the state, is acting as an official representative of the state;
- 1.2 The term "Kansas-Nebraska Big Blue river compact administration," or the term "administration," means the agency created by this compact for the administration thereof;
- 1.3 The term "Big Blue river basin" means all of the drainage basin of the Big Blue and Little Blue rivers in Nebraska and Kansas downstream to the confluence of the Big Blue river with the Kansas river near Manhattan, Kansas;
- 1.4 The term "Big Blue river basin in Nebraska" means all of the drainage basin of the Big Blue river in Nebraska and is exclusive of the drainage basin of the Little Blue river in Nebraska;
- 1.5 The term "minimum mean daily flow" means the minimum mean flow for any one calendar day;
- 1.6 The term "pollution" means contamination or other undesirable alteration of any of the physical, chemical, biological, radiological, or thermal properties of the waters of the basin, or the discharge into the waters of the basin of any liquid, gaseous, or solid substances that create or are likely to result in a nuisance, or that render or are likely to render the waters into which they are discharged harmful, detrimental, or injurious to public health, safety, or welfare, or that are harmful, detrimental, or injurious to beneficial uses of the water;
- 1.7 The term "water project" means any physical structure or any manmade changes which affect the quantity or quality of natural water supplies or natural streamflows and which are designed to bring about greater beneficial use of the water resources of an area;
- 1.8 The term "natural flow" means that portion of the flow in a natural stream that consists of direct runoff from precipitation on the land surface, ground-water infiltration to the stream, return flows to the natural stream from municipal, agricultural, or other uses, and releases from storage for no designated beneficial use;
- 1.9 The term "inactive water appropriation" means a water right that is subject to cancellation or termination for non-use.

Article II—Description of the Basin

- 2.1 The Big Blue river, a tributary of the Kansas river, drains an area of 9,696 square miles in south central Nebraska and north central Kansas. About 75 percent of the Big Blue river basin is in Nebraska, and the remainder is in Kansas. The Big Blue river and its principal tributary, the Little Blue river, join near Blue Rapids, Kansas. From there, the Big Blue river flows generally southward to join the Kansas river near Manhattan, Kansas, as shown on exhibit A.
- 2.2 Much of the upper portion of the basin in Nebraska is underlain with sands and gravels that supply large quantities of water to irrigation wells. The lower portion of the basin in Nebraska and that portion of the basin in Kansas lack significant ground-water supplies except within the major stream valleys.

Article III—Organization of Compact Administration

- 3.1 **Administration Agency.** There is hereby established an interstate administrative agency, to be known as the "Kansas-Nebraska Big Blue river compact administration," to administer the compact.
- 3.2 **Administration membership.** The administration shall be composed of one ex officio member and one advisory member from each state, plus a federal member to be appointed by the president if he so desires. The ex officio member from each state shall be the official charged with the duty of administering the laws of his state pertaining to water rights. Said official shall designate a representative who may serve in his place at meetings of the administration. All actions taken by the designated representative in the transaction of the business of the administration shall be in the name of the official he represents and shall be binding on that official. The advisory member from each state may serve in any capacity within the administration. He shall reside in the Big Blue river basin portion of the state he represents.
The governor of each state shall appoint the advisory member from that state for a term of four years. This appointment shall be made within 90 days after the effective date of this compact.
- 3.3 **Administration government.** The administration shall hold its first meeting within 120 days after the effective date of this compact, and it shall meet at least annually thereafter. The federal member, if one be designated, shall serve as chairman, without vote. If no federal representative is appointed, the administration shall select a chairman, in addition to such officers as may be provided for in the rules and regulations, to serve at the will of the administration. A meeting quorum shall consist of the ex officio members from both states, or their designated representatives. Each state shall have but one vote, cast by the ex officio member or his representative. All actions must be approved by both ex officio members or their representatives. Minutes of each meeting shall be kept, and they shall be available for public inspection.
- 3.4 **Administration powers and duties.** The administration shall have the power to adopt rules and regulations consistent with the provisions of this compact, to enforce such rules and regulations, and to otherwise carry out its responsibilities. It may institute action in its own name in courts of competent jurisdiction to compel compliance with the provisions of this compact and with the rules and regulations it adopts.
The administration is hereby authorized to employ the technical and clerical staff necessary to carry out its functions, and to maintain the office and appurtenances necessary to conduct its business. It may employ attorneys, engineers, or other consultants. It may purchase equipment and services necessary to its functions.
The administration shall publish an annual report including a review of its activities and financial status. It may also prepare and publish such other reports and publications as it deems necessary.
In order to provide a sound basis for carrying out the apportionment provisions of this compact, the administration shall cause to be established such stream-gaging stations, ground-water observation wells, and other data-collection facilities as are necessary for administering this compact; and it shall install such other equipment and collect such data therefrom, for a period of not less than five years, as are necessary or desirable for evaluating the effects of pumping of wells on the flows of the Big Blue and Little Blue rivers at the Kansas-Nebraska state line. The well area to be considered is described in Article V, paragraph 5.2.
The administration shall have authority to accept funds from local, state, and federal sources. It may enter into cooperative agreements and contribute funds to support such data-collection and analysis programs as are necessary for administration of the compact.

Article IV—Responsibility of Each State

- 4.1 **Expenses of administration.** Each state and federal member of the administration shall receive such compensation and such reimbursement for travel and subsistence as are provided by the government he represents, and he shall be paid by that government.
- 4.2 **Budget.** Each year, the administration shall prepare a properly documented budget covering the anticipated expenditures of the

administration for the following fiscal period. Each state shall make provision in its budget for funds to pay its share of the expenses of the administration, which shall be divided equally between the states of Kansas and Nebraska. The administration shall establish a fund to which each state shall contribute equally and from which the expenses of the administration shall be paid.

4.3 **Records and information.** The state of Kansas and the state of Nebraska shall cooperate with the administration and furnish to it such records, information, plans, data, and assistance as may be reasonably available; and they shall keep the administration advised of federal activities in connection with planning, design, construction, operation, and maintenance of water-resource projects in the Big Blue river basin.

Any local, public, or private agency collecting water data or planning, designing, constructing, operating, or maintaining any water project or facility in the Big Blue river basin shall keep the administration advised of its investigations and of any proposed changes and additions to existing projects and facilities, and it shall submit plans for new projects to the administration for review of those project aspects affecting surface-water flowage and quality.

Article V—Apportionment of Waters of the Big Blue River Basin

5.1 **Principles of apportionment.** The physical and other conditions peculiar to the Big Blue river basin constitute the basis for this apportionment, and neither of the signatory states hereby, nor the congress of the United States by its consent hereto, concedes that this apportionment establishes any general principle with respect to any other interstate stream.

The states of Kansas and Nebraska subscribe to the principle of including storage capacity for low-flow regulation in reservoirs constructed by the U.S. bureau of reclamation and the U.S. army corps of engineers, and to the principle of such administration as is required to assure that water released from storage for low-flow regulation shall remain available in the stream to accomplish its intended purpose.

5.2 **Nebraska apportionment.** The state of Nebraska shall have free and unrestricted use of the waters of the Little Blue and Big Blue river basins in Nebraska, such use to be in accordance with the laws of the state of Nebraska, subject to the limitations set forth below.

(a) Water appropriations of record in the Little Blue and Big Blue river basins in Nebraska on November 1, 1968, that were then inactive, shall be cancelled by due process of laws in effect in that state.

(b) During the period, May 1-September 30, the state of Nebraska shall regulate diversions from natural flow of streams in the Little Blue and Big Blue river basins by water appropriators junior to November 1, 1968, in order to maintain minimum mean daily flows at the state-line gaging stations (which are now located at Fairbury and Barneston, respectively, but which may be relocated at such other places as may be designated state-line gaging stations by the administration) during each month as follows:

Little Blue River

May 45 cfs
June 45 cfs
July 75 cfs
August 80 cfs
September 60 cfs

Big Blue River

May 45 cfs
June 45 cfs
July 80 cfs
August 90 cfs
September 65 cfs

When such action is necessary to maintain the above schedule of flows, the state of Nebraska shall:

- (1) Limit diversions by natural-flow appropriators in Nebraska in accordance with their water appropriations;
- (2) Close, in reverse order of priority, natural-flow appropriations with priority dates subsequent to November 1, 1968, including rights to store water in the conservation-storage zones of reservoirs;
- (3) Enjoin all persons not holding valid natural-flow appropriations from taking water during periods when the exercise of junior natural-flow appropriations is being restricted;
- (4) Regulate, in the same manner that diversion of natural flows is regulated, withdrawals of water from irrigation wells installed after November 1, 1968, except equivalent wells drilled to replace wells installed before that date, in the alluvium and valley side terrace deposits within one mile from the thread of the river and between the mouth of Walnut creek and the Kansas-Nebraska state line on the Little Blue river and between the mouth of Turkey creek and the Kansas-Nebraska state line on the Big Blue river (as delineated on exhibits A and B of Supplement No. 1 to the report of the engineering committee) provided that, if the regulation of such wells fails to yield any measurable increases in flows at the state-line gaging stations as determined by the investigations to be undertaken under Article III, paragraph 3.4, the regulation of such wells shall be discontinued. Determination of the effect on streamflow of the pumping of such wells shall rest with the administration.

Delivery of water under the terms of this article shall be deemed to be in compliance with its provisions when the amounts passing the state-line gaging stations are substantially equivalent to the scheduled amounts. Minor irregularities in flow shall be disregarded.

(c) The storage capacity provided in reservoirs in the Little Blue river basin in Nebraska shall be limited to a total of 200,000 acre-feet. Similarly, the storage capacity in reservoirs in the Big Blue river basin in Nebraska shall be limited to 500,000 acre-feet. These limitations are exclusive of storage capacity that may be found necessary for regulation and use of waters imported into these basins in Nebraska; exclusive of storage capacity in small reservoir projects where the storage of water for subsequent use is less than 200 acre-feet; exclusive of storage capacity allocated to sedimentation and flood control; and exclusive of storage capacity allocated to, and from which water is released to accomplish, low-flow augmentation for improvement of water quality, for fishery, wildlife, or recreation purposes, or for meeting the flow schedules at the Kansas-Nebraska state line as set out in Article V, paragraph 5.2.

5.3 **Kansas apportionment.** The state of Kansas shall have free and unrestricted use of all waters of the Big Blue river basin flowing into Kansas from Nebraska in accordance with this compact, and of all waters of the basin originating in Kansas, excepting such waters as may, in the future, flow from Kansas into Nebraska.

5.4 **Transbasin diversion.** In the event of any importation of water into the Big Blue river basin by either state, the state making the importation shall have exclusive use of such imported water, including identifiable return flows therefrom. Neither state shall authorize the exportation from the Big Blue river of water originating within that basin without the approval of the administration.

Article VI—Water Quality Control

6.1 The states of Kansas and Nebraska mutually agree to the principle of individual state efforts to control natural and man-made water pollution within each state and to the continuing support of both states in active water pollution control programs.

6.2 The two states agree to cooperate, through their appropriate state agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the Big Blue river basin whenever such sources are called to their attention by the administration.

6.3 The two states agree to cooperate in maintaining the quality of the waters of the Big Blue river basin at or above such water quality standards as may be adopted, now or hereafter, by the water pollution control agencies of the respective states in compliance with the provisions of the federal water quality act of 1965, and amendments thereto.

6.4 The two states agree to the principle that neither state may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment.

Article VII—General Provisions

7.1 **Right to store water in upper state.** The right of the state of Kansas or of any person, corporation, local agency, or entity in Kansas to construct or participate in the future construction and use of any storage reservoir or diversion works in the Big Blue and Little Blue basins of Nebraska for the purpose of regulating water to be used in Kansas shall never be denied: **Provided**, That such right is subject to the laws of the state of Nebraska and that any such storage for use by Kansas shall be excluded from the limitations on storage under Article V, paragraph 5.2 (c).

Releases of water from storage provided by Kansas interests in the state of Nebraska shall not be counted toward meeting the minimum flow requirements at the state line under the provisions of paragraph 5.2 (b).

7.2 **Disclaimer.** Nothing contained in this compact shall be deemed:

- (1) To impair, extend, or otherwise affect any right or power of the United States, its agencies, or its instrumentalities involved herein;

(2) To subject to the laws of the states of Kansas and Nebraska any property or rights of the United States that were not subject to the laws of those states prior to the date of this compact;

(3) To interfere with or impair the right or power of either signatory state to regulate within its boundaries the appropriation, use, and control of waters within that state consistent with its obligations under this compact.

7.3 **Invalidity in part.** Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of either signatory state or to the constitution of the United States, all other severable provisions of this compact shall continue in full force and effect.

7.4 **Future review.** After the expiration of five years following the effective date of this compact, the administration may review any provisions hereof; and it shall meet for such review whenever a member of the administration from either state requests such review. All provisions hereof shall remain in full force and effect until changed and amended within the intent of the compact by unanimous action of the administration, and until such changes in this compact are ratified by the legislatures of the respective states and are consented to by the congress of the United States, in the same manner that this compact is required to be ratified and consented to before it becomes effective.

7.5 **Termination.** This compact may be terminated at any time by appropriate action of the legislatures of both signatory states. In the event of amendment or termination of the compact, the water-resource developments made in compliance with, and reliant upon, this compact shall continue unimpaired.

Article VIII—Ratification

8.1 This compact shall become binding and obligatory when it shall have been ratified by the legislature of each state and consented to by the congress of the United States and when the congressional act consenting to this compact includes the consent of congress to name and join the United States as a party in any litigation in the United States supreme court, if the United States is an indispensable party and if the litigation arises out of this compact or its application, and if a signatory state is a party thereto.

8.2 Notice of ratification by the legislature of each state shall be given by the governor of that state to the governor of the other state and to the president of the United States, and the president is hereby requested to give notice to the governor of each state of the consent by the congress of the United States.

In Witness Whereof the authorized representatives have executed three counterparts hereof, each of which shall be and constitute an original, one of which shall be deposited with the administrator of general services of the United States, and one of which shall be forwarded to the governor of each state.

Done at Lincoln, Nebraska, this 25th day of January 1971.

Keith S. Krause

Commissioner for the state of Kansas

Dan S. Jones, Jr.

Commissioner for the state of Nebraska

Approved: Elmo W. McClendon

Representative of the United States of America

History: L. 1971, ch. 332, § 1; July 1.