

Fighting over

Kansas and Colorado have long history of battling over the river

By MARY JEAN PORTER

The Pueblo Chieftain

Kansas-Colorado water disputes are nothing new.

As early as the 1890s, western Kansas irrigators charged that Coloradans were hogging Arkansas River water. The state of Kansas took their claims to court in 1901, saying that Colorado ditches had depleted Arkansas River flow throughout all of Kansas. Reduced surface and ground water flows had ruined the economy along the river and hurt navigation below Wichita, the complaint said.

In 1907, the Supreme Court ruled that Colorado had depleted the river, but the benefits to Colorado outweighed the damages to Kansas. The court said Kansas could seek relief in the future.

The two states were back in court in 1928 when Colorado sought to protect its use of the river, and again in 1943 when the

Supreme Court rejected a special master's plan to divide the river into five parts for Colorado and one part for Kansas. The court instead told the two states to negotiate, and the 1949 Arkansas River Compact resulted.

But the compact was vague, and Arkansas Valley well use dramatically increased in the 1950s and early 1960s.

The compact didn't bring an end to Kansas' claims that upstream diversions were hurting its interests, nor did it end litigation.

Back in court in 1985, Kansas claimed that Colorado wells, winter water storage and the Trinidad Reservoir depleted river flow at the state line. All claims but the one concerning wells eventually were dismissed. Special Master Arthur Littleworth in 1994 upheld Kansas' contention that well pumping in Colorado depleted

water flowing across the state line.

And, in 1995, the Supreme Court upheld Littleworth's finding that Colorado had violated the Arkansas River Compact through excessive well pumping.

The second phase of the trial, in which remedies will be recommended by Littleworth, began Nov. 8 in Pasadena, Calif.

Kansas has claimed \$78 million in damages — more than \$60 million of it interest for the years 1950 to 1996 when depletions that violated the compact occurred.

David Robbins, the attorney handling Colorado's case, recently said that Kansas' claim may be reduced because its lawyers had admitted during cross-examination that "some of the data they used didn't accurately portray their damages."

Robbins said he plans to present a case that will ask if Colorado can deliver water instead of money for at least a portion of the damages.

Littleworth will submit a recommendation to the U.S. Supreme Court after hearing the final phase of testimony in April and May, Robbins said, and the final trial in Washington, D.C., probably is at least a year away.

Colorado Attorney General Ken Salazar said on the first day of this phase of the trial that Colorado has demonstrated good faith by putting Lower Arkansas Valley wells on meters, by setting new well rules that require replacement of depletions to the river's state line flow, and by working with Kansas to set up an offset account in John Martin Reservoir.



Chieftain photo by James Amos

A truck drives through the dry bed of the Arkansas near Garden City, Kan.

he Arkansas



The Arkansas
OUR LIFE BLOOD

Average water withdrawals by owner

ALL MEASUREMENTS ARE IN
ACRE-FEET PER YEAR

CITIES

Colorado Springs	76,000
Pueblo	38,659
Aurora	35,459
Canon City	5,703
P. West	3,100
Florence	2,067
Lamar	900

OTHER

Rocky Mountain Steel	76,779
Lower Arkansas Water Manage. Assoc.	9,112
Arkansas Groundwater Users Ass.	2,795
Fort Lyon irrigation and storage canals	339,672
Colorado Canal	119,167
Catlin Canal	116,725
Rocky Ford High Line	101,566
Amity Canal	107,170
Bessemer Ditch	70,981
Holbrook Canal	55,653
Lamar Canal	54,034
Rocky Ford Ditch	36,834
Las Animas Consolidated (Public Service)	33,225
Oxford Farmers Canal	30,816
Buffalo Canal	23,345
Fort Bent Canal	20,852
X-Y Canal	10,572
Otero Canal	9,507
Keesee Ditch	7,373
Hyde Ditch	3,334
Manvel Ditch	914
Kansas line flows	192,358

Sources: Colorado Division's
Engineer's Office, municipalities

AVERAGE DIVERSIONS

In the years since 1985, Colorado has spent \$10 million on the lawsuit, Robbins said. Half of it has been on engineering, and half on court fees, attorney fees and Colorado's portion of the special master's fee.