Non-binding Arbitration Before
Martha Pagel, Arbitrator

Initiated Pursuant to Final Settlement Stipulation
*Kansas v. Nebraska & Colorado*
No. 126, Orig., U.S. Supreme Court
Decree of May 29, 2003, 538 U.S. 720

Colorado's Compact Compliance Augmentation Plan
(Arbitration Initiated May 2, 2013)

# PRE-FILED TESTIMONY OF KANSAS WITNESS DAVID L. POPE, P.E.

September 18, 2013

**Q: What is your professional background?**

A: I hold BS and MS degrees in Agricultural Engineering from Oklahoma State University, where I specialized in irrigation and water resources engineering. I am a licensed Professional Engineer in Kansas. After graduation in 1971, I worked for Kansas State University as an Extension Irrigation Engineer, served as Manager of the Southwest Kansas Groundwater Management District No. 3 and then as Assistant Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture.

I served as Chief Engineer and Director of the Division of Water Resources between 1983 and 2007. In that capacity, I had statutory responsibility for the administration of water in Kansas, including authority over the permitting and perfection of water rights, regulation and distribution of surface water and groundwater in accordance with the Kansas Water Appropriation Act. I was also responsible for the administration of some 25 other statutes related to the conservation, management, use and control of water and watercourses in Kansas. I served as a member of each of the four interstate river compact administrations or commissions established by the compacts to which Kansas is a party. I was heavily involved in two U.S. Supreme Court cases during my tenure as Chief Engineer: *Kansas v. Colorado,* No. 105, Original (Arkansas River) and *Kansas v. Nebraska and Colorado,* No. 126, Original (Republican River), and actively participated in the settlement of the Republican River case. I

testified several times as an expert witness during various phases of the *Kansas v. Colorado* trial.

After retiring as Chief Engineer in 2007, I established Pope Consulting, LLC and have provided water related consulting services to a series of clients through the current time. These included the Missouri River Association of States and Tribes, the State of Kansas, the Garden City Company and others.

All of these positions included significant involvement in water management, water administration and water policy issues.

**Q: What has been your involvement with the Republican River Compact and related issues?**

A: As Chief Engineer, I served as the Kansas Commissioner to the Republican River Compact Administration (RRCA). For many years, I directly participated in various attempts to resolve Kansas' concerns about administration and enforcement of the Republican River Compact through the RRCA in the 1980's and 1990's, as well as through separate negotiations with Nebraska officials. After Kansas was unable to resolve its concerns, Kansas initiated litigation in 1998 to enforce the terms of the Compact. Early in the litigation after some significant legal issues were decided, the States, with the involvement of the United States, entered into settlement discussions. I led the settlement team for Kansas and participated in all significant negotiations that led to the adoption of

the Final Settlement Stipulation (FSS) in late 2002. After a hearing on the proposed settlement on January 6, 2003, the FSS was recommended for approval by Special Master McKusick and it was subsequently adopted by the U.S. Supreme Court in its May 19, 2003 Decree in *Kansas v. Nebraska and Colorado,* No 126, Orig.

Since my retirement as Chief Engineer, I have provided consulting services for the State of Kansas related to the Republican River Compact. This has included testimony during three previous arbitrations and in the 2012 and 2013 trial segments in *Kansas v. Nebraska and Colorado.*

**Q: What was the nature of the hearing before Special Master McKusick on January 6, 2003, and what was your role at the hearing?**

A: The purpose of the hearing was to allow the States to brief the Special Master on the provisions of the FSS. In preparation for the hearing, the States and representatives of the United States met in advance to prepare and make assignments for their respective presentations before the Special Master. This preparation was intended to ensure that the States and the United States would be speaking with one voice before the Special Master, in an appropriate and organized presentation. While introductory and closing comments were made by Counsel for the parties and the United States, and they responded to questions from the Special Master, each of the lead negotiators--Hal Simpson (Colorado), Roger Patterson (Nebraska), and me (Kansas)--provided the primary

presentation regarding the provisions of the FSS by mutually agreed assignment. Through discussion among the participants before the hearing, the content of this joint presentation was developed. As a result, each lead negotiator was speaking with considerable confidence that a clear and accurate presentation of the States' shared positions was being provided to the Special Master.

**Q: What was the role of other members of the Kansas negotiation team that led to the approval of the FSS?**

A: The Kansas negotiation team included engineers David Barfield and Dale Book and attorneys John Draper and Lee Rolfs, with assistance from other individuals as needed. In particular, Steve Larson assisted Kansas greatly by serving on the Modeling Committee and playing a key role in the development of the RRCA Groundwater Model. Dale Book and David Barfield also served on the Modeling Committee. David Barfield was my key staff technical advisor and also served on the accounting work group, with assistance from Dale Book, who was a key consultant on various aspects of the negotiations. Because of his extensive involvement on the negotiation team, the Modeling Committee and the accounting work group that developed the RRCA Accounting Procedures, Mr. Barfield became especially knowledgeable about the FSS, including its various appendices, many of which he helped develop. After the FSS was adopted in late 2002, the RRCA Groundwater Model was approved by the States and submitted to the Special Master by July 1, 2003, as required by the schedule. Mr. Barfield and I also worked together on the implementation of the FSS through

the RRCA, where he served on the RRCA Engineering Committee. He also played a key role in the monitoring of compliance with the FSS for Kansas. When I retired as Chief Engineer in 2007, he was appointed as the next Kansas Chief Engineer, so the continuity for Kansas was very good as he was already very familiar with the duties of the Chief Engineer position, especially as they related to the Republican River Compact and FSS. In addition, he and I had also worked closely on most other interstate water issues, such as those related to the Missouri and Arkansas Rivers.

**Q: Have you been able to observe Mr. Barfield's work in helping resolve complex interstate water disputes?**

A: Yes, both before and after I retired as Chief Engineer. On the Republican River, Mr. Barfield was very helpful in resolving complex issues associated with the negotiation of the FSS, specifically including the RRCA Accounting Procedures and RRCA Groundwater Model. While I was Chief Engineer, I also observed his ability to successfully work with other parties to resolve disputed issues related to the Missouri River, as he assisted me and also represented Kansas on several committees. After I became a consultant and served as Executive Director of the Missouri River Association of States and Tribes, he represented Kansas on various Missouri River groups. For example, I observed his constructive and professional participation on the Missouri River Recovery Implementation Committee. He helped it reach consensus on several contentious issues related to the inter-relationship of Missouri River reservoir operations and recovery of

threatened and endangered species. Likewise, when I was Chief Engineer and a member of the Arkansas River Compact Administration he assisted me with the resolution of several complex operational issues through a Special Engineering Committee, several of which were related to implementation of U.S. Supreme Court decisions. After he became Chief Engineer, he continued this work and several additional agreements were reached. I found him to be very professional, knowledgeable and technically competent as well as very willing to look for common solutions with other parties, while still properly representing the interests of the State of Kansas.

**Q: Why did Kansas approve the FSS, and what were Kansas' expectations from the Settlement?**

A: There were a variety of reasons why I recommended approval of the FSS to the Governor and Attorney General of Kansas. In general, we expected Kansas to benefit from the protections the FSS promised to provide: to receive its entitlement under the Compact, especially for the benefit of its water users who had suffered shortages due to upstream overuse for many years; to resolve a long standing dispute with Nebraska on what we thought were clear terms; to resolve issues regarding the administration of the Compact and how to measure compliance, by using the jointly developed RRCA Groundwater Model and the RRCA Accounting Procedures, both of which we understood could only be changed by unanimous agreement of the Compact Administration; and to avoid protracted litigation. We carefully examined the hydrology, science and modeling

and accounting results so we fully understood the “bottom line” in terms of what the settlement would mean to Kansas as both an upstream and downstream State, and believed these results were acceptable. During the negotiations, it also appeared that a good working relationship and trust had been developed among the States and that they were committed to both the implementation of the FSS and compliance with the Compact and the U.S. Supreme Court Decree. However, the cost of agreement was substantial to Kansas: Kansas gave up its damage claim and made a number of concessions during the negotiations to develop an overall settlement package that was acceptable to all the States and to the United States.

**Q: What are some of the key provisions of the FSS, especially related to the provisions in dispute during this Arbitration?**

A: Without attempting to list all the provisions, I would generally note that Section I of the FSS, Ex. CCP/BR-J6, includes provisions related to resolution of the litigation, waiver of existing claims, and agreement to undertake the obligations provided for in the FSS and to specify actions to be undertaken by the RRCA, such as adoption of the RRCA Accounting Procedures. Section II includes many important definitions.

Section III deals with existing development, including a moratorium on the drilling of new wells above Guide Rock, Nebraska, with certain exceptions, as well as

acceptance of the current restrictions on new wells imposed by existing laws and regulations in the portion of the basin in Northwest Kansas and Colorado.

Section IV includes some of the major provisions of the FSS related to Compact Accounting, including use of the RRCA Groundwater Model and RRCA Accounting Procedures. As covered in more detail later, some flexibility is included in Section IV.B related to the use of water allocated within Sub-basins, but within carefully crafted limits in this section and Section V, including the specific actions required of each State in Section V.B.

Section IV.H notes that Augmentation credit, as further described in Subsection III.B.1.k, shall be calculated in accordance with the RRCA Accounting Procedures and the RRCA Groundwater Model.

Section V deals with the additional requirements related to an important location in the basin at Guide Rock, Nebraska, where the Superior-Courtland Diversion Dam is located and water is diverted by the Kansas and Nebraska Bostwick Irrigation Districts. It provides for additional water administration under certain conditions and special provisions related to Water-Short Year Administration, as specified Subsection V.B.

Section VI deals with soil and water conservation measures, Section VII includes the Dispute Resolution requirements and procedures. Section VIII makes clear

the intent of the parties that the agreement was based on inclusion of all its terms and that the rights and obligations set forth in the Stipulation are not severable.

**Q: What is your understanding of the Augmentation Plan provisions of the FSS?**

A: Section IV.H of the FSS requires that Augmentation credit, as further described in Subsection III.B.1.k, shall be calculated in accordance with the RRCA Accounting Procedures and by using the RRCA Groundwater Model. Subsection III.B.1.k was included as an exception to the moratorium related to augmentation wells acquired or constructed by a State for the sole purpose of offsetting stream depletions in order to comply with its Compact Allocations. It provides some important specific criteria, such as the requirement that such wells shall not cause any new net depletions to stream flow either annually or long-term, and how this would be done, but does not provide a full range of detailed criteria for review. However, it does include a specific requirement for RRCA evaluation and approval. This provision was included because it was recognized that each proposed augmentation proposal would be different and extraordinary and would require considerable analysis of the impacts to each State, the hydrology and physical circumstances, and the RRCA accounting.

My understanding of the intent of including these subsections related to augmentation plans is the same as described by Hal Simpson, Colorado State Engineer and lead FSS negotiator for Colorado, to Special Master McKusick at

the hearing on January 6, 2003 (see the transcript of that hearing, Ex. CCP/BR-J14, at pages 81-83). Mr. Simpson noted that: "And in particular, the States have agreed that a State could acquire existing wells, eliminate the consumptive use of water by these wells, and pump groundwater from these wells or even a new well to a stream to be used as an offset to depletions caused by other consumptive uses or wells in the basin." He went on to say: "We have agreed that the use of these augmentation wells shall not cause any new net depletions to the stream either annually or long term." I understood his reference to "or even a new well" to recognize that an existing well field may need to be reconfigured for augmentation purposes and that such a reconfiguration might involve a new well. Mr. Simpson gave an example of how an augmentation plan would work. He noted that Colorado brought up the idea of augmentation plans as something to be considered as a last resort to come into compliance under the Compact. Mr. Simpson also said: "But I want to make it clear, we just can't do it without first having the Compact Administration's approval in advance of the plan and how it would operate."

I also concur with Mr. Simpson, that it was expected that the consumptive use of water by existing wells would be eliminated when the wells or replacement wells were converted to augmentation purposes. I do not believe the negotiators thought the FSS would allow additional groundwater pumping, in addition to the amount of historical consumptive use that was occurring, for augmentation

because of the clear restriction prohibiting any new stream depletion. This was especially the case above Swanson Reservoir. See FSS, Subsection III.A.3.

Roger Patterson, the Director of the Nebraska DNR and lead FSS negotiator for Nebraska, responded to a question by the Special Master during the same hearing (at page 17), noting that Hal Simpson was the expert on augmentation plans and that he would cover them in more detail later in the hearing. However, Mr. Patterson pointed out that prior to any State developing an augmentation plan, it would have to come to the Compact Administration for review and approval.

The fact that Colorado and Nebraska specifically noted the requirement for RRCA review and approval of proposed augmentation at the Special Master's hearing is significant. It points to their clear understanding of the need for this requirement, which was also emphasized by Kansas when it agreed to allow inclusion of the augmentation provisions of the FSS. I concur that the provision requiring RRCA approval was included to specifically allow the details of the plan to be reviewed carefully before approved by all the member States.

**Q: Have you reviewed the letter from Slattery & Hendrix Engineering, LLC dated August 21, 2013 that provides certain rebuttal opinions concerning the reports filed by Mr. Book and Mr. Barfield of Kansas?**

A: Yes.

**Q. Based on your knowledge of the FSS and your experience in the negotiations that led to it, what is your response to Opinion No. 1 of the Slattery report referred to above?**

A. Opinion No. 1 in the Slattery & Hendrix Engineering, LLC report (Slattery report) makes unfounded assumptions and goes beyond the provisions of the FSS. I agree that Colorado is allowed to use certain water in excess of its specific Sub-basin Allocations as long as the use is offset by underuse in another Sub-basin and certain other criteria are met as spelled out in FSS Subsection IV.B and Subsection V.B.3. Specifically, Subsection IV.B says:

> "B. Water derived from Sub-basins in excess of a State's specific Sub-basin Allocation is available for use by each of the States to the extent that:
>
> 1. such water is physically available;
> 2. use of such water does not impair the ability of another State to use its Sub-basin Allocation within the same Sub-basin;
> 3. use of such water does not cause the State using such water to exceed its total statewide Allocation; and
> 4. if Water-Short Year Administration is in effect, such use is consistent with the requirements of Subsection V.B."

Subsection IV.B is clear that the use of water derived from Sub-basins in excess of a State's specific Sub-basin is available for use by each State only if the four criteria quoted above are met. Item No. 3 says the use of such water can not

cause the State using the water to exceed its total statewide Allocation. There is no mention of including the deliveries from an augmentation project. There is also no specific mention in Subsection V.B of a right for Colorado to use "unallocated water".

Article III of the Republican River Compact says that "The specific allocations in acre-feet hereinafter made to each State are derived from the computed average annual virgin water supply originating in the following designated drainage basins…" and lists them by drainage basin. Article IV provides the specific allocations to each of the three States. Kansas and Nebraska each received an allocation from the main stem of the Republican River and "…from the water supplies of upstream basins otherwise unallocated herein…". In other words, the "unallocated" waters are specifically allocated to Kansas and Nebraska as part of these two States' allocations on the main stem of the Republican River. Colorado received no allocation from the main stem of the Republican River nor from otherwise unallocated water from upstream basins. As a result, there is no specific Colorado entitlement in the Compact or FSS to "unallocated" water. However, Section IV.B of the FSS provides certain flexibility in the Sub-basins for each of the States. Colorado may exceed its allocation in a given Sub-basin, limited by the other constraints outlined In the Section IV.B as outlined above, including compliance with what is referred to as the "Sub-basin Non-impairment Requirement", in the RRCA Accounting Procedures. The provisions in Section IV.B. were not intended to grant Colorado an allocation of the unallocated waters.

In fact, the provisions of Section IV related to Compact Accounting and Section V related to Guide Rock were of great concern to Kansas and it gave detailed consideration to both its upstream obligations in Northwest Kansas and the availability of water downstream at Guide Rock during the negotiations. With regard to Sub-basin flexibility and unaccounted water, Sub-section V.B.2.c for Nebraska and Sub-section V.B.4 for Kansas explicitly set forth each State's compliance obligation in the Sub-basins. In Water-Short Year Administration, both of these provisions limit CBCU for the respective State to the sum of their specific Sub-basin Allocations and their percent (Nebraska 48.9% and Kansas 51.1%) of the sum of the Unallocated Supply from those same Sub-basins. As a result, there is no plausible way that Colorado can legitimately claim it is entitled to use the unallocated flow in the South Fork Sub-basin ahead of Kansas, as referred to in the basis for Opinion 1 of the Slattery report, when the FSS allows Nebraska and Kansas to explicitly rely on that same unallocated water for use in either their Sub-basins or the main stem.

The Compact and Table 2 of the RRCA Accounting Procedures make clear that it is Kansas and Nebraska that are entitled to use the "otherwise unaccounted" water in the basin. Therefore, Colorado may use more than it is allocated in a Sub-basin only if it uses less in another Sub-basin, limits its total statewide CBCU to its total Allocation and otherwise meets the criteria in the FSS, so that Kansas and Nebraska have access to their full Allocations on the main stem of the Republican River, including the "otherwise unallocated" water. It may also

propose an augmentation plan that must be reviewed and approved by the RRCA as noted above, which could resolve the complexities related to modeling, accounting and proper crediting of augmentation water consistent with the Compact and FSS, so that the interests of each State are protected.

**Q. Based on your knowledge of the FSS and your experience in the negotiations that led to it, do you agree with Mr. Slattery's and Mr. Hendrix's asserted basis for their Opinion No. 1?**

A: Regarding the comments in the Basis for Opinion 1 in the Slattery report, Mr. Slattery appears to base his support for the opinion on the author's understanding of the FSS and their participation in the settlement process. However, as noted in response to the second question above, I led the settlement team for Kansas and participated in all significant negotiations that led to the adoption of the Final Settlement Stipulation (FSS) in late 2002. I was involved in the negotiations of all of the significant components of the FSS, and the provisions on augmentation and sub-basin non-impairment were among those significant provisions. Neither Mr. Slattery nor Mr. Hendrix was a direct participant for the Colorado team during the actual negotiations. I do recall seeing Mr. Slattery at times in a support role for the Colorado negotiation team, but not as a member of the actual negotiation team or a person in attendance during negotiations to any significant degree. While Mr. Slattery may have assisted the Colorado negotiators, and participated in such things as the Model

Committee activities, their knowledge of the discussions that took place during the actual negotiation sessions would have been second hand, at best.

**Q: Did you have any discussions with either Mr. Slattery or Mr. Hendrix about the interpretation of the provisions on augmentation or use of the unallocated waters in a sub-basin?**

A: No.

**Q: Did you have discussions with your counterparts from Colorado and Nebraska about the augmentation provisions and the provisions related to use of the unallocated waters in a sub-basin?**

A: Yes, these provisions were individually discussed, but not the interrelationship of the augmentation provisions and unallocated water.

**Q: Did those discussions include an agreement to interpret the augmentation provisions as Mr. Slattery has described in his expert report?**

A: No. In my discussions in the negotiations with my counterparts from Colorado and Nebraska, we did not agree to interpret the augmentation provisions to allow an augmentation credit in one sub-basin that would then allow consumption of unallocated waters from another sub-basin.

**Q: Did either Hal Simpson or Dr. Ken Knox explain to you that Colorado interpreted the augmentation provisions in the way that Mr. Slattery describes in his expert report?**

A: No.

**Q: Did either Roger Patterson or Dr. Ann Bleed explain to you that Nebraska interpreted the augmentation provisions in the way that Mr. Slattery describes in his expert report?**

A: No.

**Q: Did anyone from the United States explain to you that the United States interpreted the augmentation provisions in the way that Mr. Slattery describes in his expert report?**

A: No.

**Q: Are you aware of any discussions between any representatives of the States and the United States where the representatives agreed to Mr. Slattery's interpretation of the augmentation provisions, as described in his expert report?**

A: No.

**Q. Also based on your knowledge of the FSS and your experience in the negotiations that led to it, are you aware of any provision of the FSS or**

**discussions during the negotiations regarding "first come/first served" as referred to in the basis for Opinion No. 1 of the Slattery report?**

I am aware of no reference in the FSS to "first come/first served" statement noted in the basis for Opinion 1 in the Slattery report, nor do I recall any discussion during the negotiations regarding the matter. The only reference I find to that terminology is the response to Special Master McKusick's question by Ms. Himmelhoch, the U.S. Department of Justice Attorney cited by the Slattery Report. Unlike the coordinated presentations from the States at the hearing, this was an "ad hoc" response to a question that had not been previously discussed by the parties in preparation for the hearing or during the negotiations. My response to the same question from the Special Master, as quoted on page 3 of the Slattery report, in pertinent part was: "…but an example would be in a sub-basin shared by two States, this settlement agreement provides that the upper State would not use any more water than the amount that would still leave available the amount allocated to the downstream State". Unlike the simple, but incomplete answer provided by Ms. Himmelhoch, I was trying to convey in my answer the broader aspect of how "unaccounted" water may be used, including the need to satisfy the allocation of the downstream State. This statement was not limited to a specific Sub-basin, since "unaccounted" water is part of the main stem supply, as noted above. In addition, the first paragraph on page 3 of the Slattery report omits a portion of the cited quote from the second full paragraph on page 33 of the Transcript of the January 6, 2003 hearing before Special

Master McKusick. The omitted language is the second sentence that says: "Secondly, a State, of course, may not use more than its state-wide allocation".

**Q: Have you reviewed the report prepared by Dick Wolfe, Colorado State Engineer dated August 21, 2013 that provides certain opinions concerning the reports filed by Mr. Barfield, Mr. Book and jointly by Mr. Larson and Mr. Perkins of Kansas?**

A: Yes.

**Q. Based on your knowledge of the Republican River Compact, the FSS and your experience serving as a Commissioner of the Compact and participation in the negotiations that led to the FSS, what is your response to the Opinions in the report referred to above (Wolfe report)?**

A. Mr. Wolfe contends that Kansas had no reasonable basis on which to base its no votes at the May 2, 2013 Special Meeting of the RRCA on the Colorado Compact Compliance Pipeline (CCP) and the Colorado's Bonny Reservoir Accounting Proposal, and it therefore acted arbitrarily. However, this result is a product of Colorado's own actions and timing relative to the provisions of the RRCA and FSS. Mr. Wolfe notes that Colorado worked diligently in dozens of settlement discussions since 2010 to attempt resolution of the issues related to the original CCP proposal. As noted in Mr. Barfield's July 29, 2013 report, Kansas also worked diligently in this regard, and I am personally aware of Mr. Barfield's dedication of significant time and resources to that effort. According to the

transcript of the Special Meeting of the RRCA held May 2, 2013, the meeting was requested by Colorado on April 5, 2013 to consider the two proposals referred to above. Thus Mr. Wolfe forced the proposals to a vote based on the provisions of Sub-section VII of the FSS. While that is allowed by the FSS, as is the Arbitration that can be requested regarding a disputed issue, the Compact, FSS, and RRCA rules allow each State to vote to protect its entitlements and interests under the Compact and FSS. I would add that during the negotiations that led to the FSS, there were no discussions or agreement to impose a "reasonableness" standard on each State. In this case, based on its concerns about the Colorado proposals, Kansas had to choose whether to vote to approve one or both proposals notwithstanding its concerns. By voting no, Kansas ensured that additional efforts would be devoted to trying to resolve the issue. Therefore, the action by Kansas to vote no was not arbitrary.

**Q. Based on your knowledge of the FSS, the Republican River Compact, your experience serving as a Commissioner of the Compact and your participation in the administration of various other compacts and interstate organizations, what is your response to Opinion No. 3 in the Wolfe report?**

A. Mr. Wolfe misunderstands the decision process embodied in the FSS. There are no provisions in the FSS requiring a State to defer to another State's proposals even if the proposing State believes they are reasonable and scientifically sound, nor were there discussions during the negotiations about such a standard. The FSS envisioned a process where each State could independently exercise its

discretion based on its own views about what is an appropriate decision regarding the administration of the Compact or the resolution of disputed issues pursuant to the FSS. In my view, the Compact provisions and rules and regulations of the RRCA requiring unanimous approval of actions are designed to protect the interests of each Member State.

Mr. Wolfe's example in the second paragraph of Opinion 3 fails to recognize the different physical location of each State in the basin, and the different potential impacts and circumstances for Kansas related to review of the Nebraska proposals for the Rock Creek Augmentation Plan and Alternative Water Short Administration. Colorado is upstream of Nebraska so the potential hydrological impact of these proposals would be much more limited, if any, compared to the potential impact to a downstream State. This would most likely affect the nature of the review by Colorado compared to Kansas. In addition, based on a 2010 agreement (Ex. CCP/BR-K22) between Nebraska and Colorado regarding Republican River issues that was re-affirmed in 2012, those two States committed to support each other's projects. Mr. Wolfe affirmed that this was the case during his testimony at an Arbitration hearing held August 26-27, 2013 for a Nebraska-initiated Arbitration that I personally observed. This agreement would have also lessened the need for in-depth analysis. In contrast, as a downstream State, Kansas must carefully review and analyze proposals made by Colorado and Nebraska in accordance with the FSS in order to evaluate their impacts to its interests, both short term and long term. In the case of the CCP, Kansas had

already invested significant resources in the review and attempted resolution of the original proposal. Given the many reasons that a State may have for exercise of its discretion when considering how to vote on a given issue related to the Republican River Compact, and the specific issues in this case, the actions of Kansas have not been unreasonable or arbitrary. Just because a State has a different opinion regarding the provisions of the FSS, a specific proposal or how to best represent its interests, does not mean it is unreasonable. However, it is unreasonable to suggest that a State should simply defer to another State based on that State's judgment. In short, a State cannot be its own judge in a multi-state compact. This matter should also be viewed in the context of the efforts made by the State of Kansas to work towards resolution of the disputed issues.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 18, 2013.

David L Pope