

**Andersen, Pamela**

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**From:** Peter Ampe [peter.ampe@state.co.us]  
**Sent:** Friday, December 01, 2006 2:38 PM  
**To:** Pam Andersen; Lee Rolfs  
**Cc:** John Draper  
**Subject:** Re: Draft regulation re diversion in one state and use in another  
**Attachments:** PJA\_RRCA proposed resolution.11-14-06.clean\_1.doc

Lee,

Thanks for taking the lead on this. My substantive comment is that I think the resolution should specifically recognize Art. VI of the Compact has restrictions on the ability of an upper state to prohibit the diversion of water from the upper state to a lower state. Obviously the resolution is not trying, and cannot try, to get around Art. VI, but including a specific acknowledgment may avoid future disagreements.

I've attached some suggested revisions in strikeout/underline format.

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Assistant Attorney General  
Federal and Interstate Water Unit  
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>>> "Rolfs, Lee" <LROLFS@KDA.STATE.KS.US> 11/15/2006 12:12 PM >>>

Peter and Pam,

Attached is the Kansas redraft of the proposed regulation and MOA dealing with diversion of water in one state and use in another state. At the annual RRCA meeting in August, a legal committee was formed and given the task of coming to **agreement** on a regulation to recommend to the RRCA **by November 15, 2006**. Kansas has redrafted the regulation based on the preliminary discussion of the legal committee at the annual meeting.

We apologize for not getting this draft out sooner so that we could have come to agreement by November 15, 2006, as charged by the RRCA, but it was the best we could do. Please review and comment, or redraft as soon as it is convenient.

7/13/2007

The second task given to the legal committee was to exchange a letters/briefs on the topic of accounting for non-federal evaporation below Harlan County Lake and come to agreement by November 15, 2006. Again it is apparent we will not meet that deadline either. Kansas has been working on its letter/brief and plans to furnish it to you both tomorrow.

Lee

7/13/2007

DNR 007272

Draft 11-14-06--clean

**RRCA Draft Resolution concerning the permitting of a new authorized diversion of water in one State that is proposed to be beneficially consumed in another State.**

**Whereas**, Article IV.C.1 of the Final Settlement Stipulation (FSS), provides that streamflow depletion will be charged to the State where the beneficial consumptive use occurs;

**Whereas**, Article IX of the Republican River Compact (RRC) provides that "it shall be the duty of the three States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies...Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact..." (emphasis added)

**Whereas**, Regulation No. 2 of the RRCA provides that those public officials are the members of the RRCA;

**Whereas**, the members of the RRCA recognize that Article VI of the RRC provides that "[t] right of any person, entity, or lower state to construct, or participate in the future construction and use of any storage reservoir or diversions works in an upper state for the purpose of regulating water herein allocated for beneficial consumptive use in such lower state, shall never be denied by an upper state; provided, that such right is subject to the rights of the upper state";

**Whereas**, the members of the RRCA recognize that: (a) that Article III of the RRC provides that each state has been given a specific allocation of water, (b) that the Compact and the FSS provide that streamflow depletion is charged to the State where the beneficial consumptive use occurs, (c) one State could be requested to permit or approve the diversion or withdrawal of water in that State that would be consumed in another State; and (d) that the States desire to adopt a regulation to ensure that a permit or approval granted in one State would not cause, or potentially cause, a use of water in violation of the provisions of the Compact in another state;

**Whereas**, the members of the RRCA, as part of their duties to administer the RRC, have determined that it is in the best interests of all three States that one State should not, by itself, be able permit a new diversion of water in that State which would be consumed in another State without the consent of the RRCA and the State into which the water would be diverted and consumed.

**Therefore**, the RRCA, in exercising its duties to administer the RRC, hereby finds that the following regulation is consistent with the provisions of the Compact

and the FSS and therefore resolves to adopt Rule and Regulation No. 16, which provides as follows:

"Regulation No. 16.

Deleted: that

(a) Any State that permits the diversion or withdrawal of water in such State that will be beneficially consumed in another State, shall place a condition on that permit that it may not be exercised until it is approved by the RRCA. If the RRCA fails to approve such a diversion and use of water, the application(s) shall be dismissed and any priority forfeited.

(b) The State that will be receiving the water is not required to cast its vote to approve the application when it is being considered for approval by the RRCA if the application would violate that State's laws or regulations, local regulations, or affect that State's ability to comply with the provisions and restrictions of the Compact or the FSS. The State that will receive the water may require imposition of any condition(s) that are necessary to make the diversion and beneficial use of the water comply with provisions of the Compact, the FSS, its own State's laws and regulations, and/or local regulations or policies, to be placed on either: (1) the permit or approval issued by the State or local governmental entity where the water is proposed to be diverted, and/or (b) a permit or approval issued by the State or local governmental entity receiving the water. The State receiving the water may also require the applicant to agree to accept the conditions of the permit or approval required by receiving State prior to issuance of its permit or approval

(c) The proposed point of diversion shall meet all of the requirements imposed by the State and/or local governmental entity in which the proposed point of diversion will be located. The proposed place of use, the use made of water, and any required offset, shall meet the requirements of the State and/or local governmental entity in which the beneficial consumptive use will occur."

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David L. Pope, P.E.  
Kansas Member  
Chairman, RRCA

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date

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Harold Simpson, P.E.  
Colorado Member

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date

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Ann Bleed, P.E.  
Nebraska Member

\_\_\_\_\_  
date

**MEMORANDUM OF AGREEMENT**

The Members of the RRCA agree that these **guidelines** should be followed for authorizing a use of water which will be diverted or withdrawn in one State and put to beneficial use in another State:

1. Within 30 days of the receipt of a complete application or other equivalent documentation which proposes to divert or withdraw ground or surface water in one State that is proposed to be put to beneficial consumptive use in another State, copies of the application or other equivalent documentation and any pertinent attachments should be provided to other affected State(s) by the State in which the application is made.
2. The State in which the proposed point of diversion will be located should provide the applicant with the requirements that must be met in order to obtain approval of the point of diversion. The applicant should also be notified that approval of the RRCA will be required.
3. The applicant shall provide each affected State(s) with all of the data needed to evaluate and process the application. The application is not considered to be complete until this data is provided.
4. The applicant must receive the approval of: (i) the State and/or local governmental entity in which the point of diversion will be located, (ii) the RRCA, and (iii) the State and/or local governmental entity that will be receiving the water. When a State and/or local governmental entity issues its permit or approval for the point of diversion and/or the beneficial use of the water, a copy shall be submitted to the other State(s) and/or local governmental entity involved.

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David L. Pope, P.E.  
Kansas Member  
Chairman, RRCA

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date

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Harold Simpson, P.E.  
Colorado Member

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