

APPENDIX F.1

**IN THE SUPREME COURT
OF THE UNITED STATES**

STATE OF KANSAS,)	
Plaintiff,)	
v.)	
STATE OF COLORADO,)	No. 105, Original
Defendant,)	October Term 1996
and)	
UNITED STATES)	
OF AMERICA,)	
<u> Defendant-Intervenor.</u>)	

**STIPULATION
RE OFFSET ACCOUNT IN
JOHN MARTIN RESERVOIR**

(Filed Apr. 03, 1997)

This Stipulation is entered into this 17th day of March, 1997, by the State of Kansas [hereinafter "Kansas"] and the State of Colorado [hereinafter "Colorado"], subject to approval by the Special Master of the United States Supreme Court.

RECITALS:

WHEREAS, Article IV-D of the Arkansas River Compact provides as follows:

This Compact is not intended to impede or prevent future beneficial development of the Arkansas River basin in Colorado and Kansas by Federal or State agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas River, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by such future development or construction;

and

WHEREAS, the United States Supreme Court has determined that post-Compact well pumping in Colorado has caused material depletion of the usable Stateline flows of the Arkansas River in violation of the Arkansas River Compact [hereinafter the "Compact"], *Kansas v. Colorado*, 115 S.Ct. 1733 (1995); and

WHEREAS, Colorado desires to continue to allow ground water pumping by its water users in excess of the pre-Compact entitlement of 15,000 acre-feet per year determined by the United States Supreme Court as long as any depletions to usable Stateline flows caused by such pumping are replaced; and

WHEREAS, the issue of Compact compliance by Colorado is presently pending before the Special

Master appointed by the United States Supreme Court; and

WHEREAS, an account in John Martin Reservoir [hereinafter the “Reservoir”] is not necessary for Colorado’s compliance with the Compact, but an account would be of benefit to Colorado by facilitating compliance with the Compact by Colorado and its water users to the extent that Colorado allows post-Compact well pumping by its water users in excess of the pre-Compact pumping entitlement of 15,000 acre-feet per year, and Colorado has requested such an account; and

WHEREAS, the Arkansas River Compact Administration [hereinafter the “Administration”] has the authority to create the Offset Account as Provided for in the Resolution Concerning as Offset Account in John Martin Reservoir for Colorado Pumping [hereinafter the “Resolution”], but neither the Administration nor either of its member states has any obligation to create the Offset Account; and

WHEREAS, the Offset Account will create benefits for water users in Kansas but also monitoring and accounting burdens for Kansas; and

WHEREAS, the existence of an account in the Reservoir does not, in and of itself, assure Colorado’s compliance with the Compact; and

WHEREAS, the Administration and the Chief of Engineers of the Army Corps of Engineers are jointly approving concurrently herewith the Resolution

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Establishing a new storage account in the Reservoir known as the “Offset Account in John Martin Reservoir for Colorado Pumping” [hereinafter the “Offset Account”]; and

WHEREAS, Kansas and Colorado desire to reach an agreement of the credit which Colorado shall receive for the delivery of water released from the Offset Account upon demand by Kansas, subject to approval by the Special Master of the United States Supreme Court;

NOW, THEREFORE, Kansas and Colorado stipulate and agree as follows:

1. In accordance with the Resolution, the Colorado State Engineer shall determine the extent to which water delivered to the Offset Account is fully consumable. Colorado understands that Kansas may not agree with the Colorado State Engineer’s determination and agrees that the Colorado State Engineer’s determination shall not be binding on Kansas in the event of a disagreement. However, both States recognize that it is useful to have the Colorado State Engineer make the determination in the first instance. In the event that Kansas disagrees with the Colorado State Engineer’s determination of the extent to which water is fully consumable, Kansas shall notify Colorado within a reasonable period of time and the States shall make a good-faith attempt to resolve the disagreement. In the event the disagreement cannot be resolved by the States, Colorado agrees that it shall have the burden to establish the

extent to which water delivered to the Offset Account is fully consumable.

2. With regard to water delivered to the Offset Account for the purpose of offsetting depletions to usable Stateline flows, which is released at the demand of Kansas pursuant to the Resolution, Colorado shall receive credit for the delivery of such water at the Stateline (less transit losses determined in accordance with paragraph 3 below) as a replacement of depletions to usable Stateline flows which occur after the effective date of the Resolution to the extent such water is fully consumable; provided, however, that a demand for a release of water from the Offset Account by Kansas shall not constitute and [an] admission by Kansas that the water released from the Offset Account and delivered to the Stateline was in fact full[y] consumable. Antecedent flows at the Stateline shall not be included in the calculated delivery. To the extent the credit for the delivery of water at the Stateline to offset depletions to usable Stateline flows exceeds calculated depletions to usable Stateline flows which occurred after the date of the Resolution, the credit shall be applied to reduce future depletions to usable Stateline flows. Colorado shall receive no credit, however, of Storage Charge Water (as defined in the Resolution) or Stateline Return Flow (as defined in the Resolution) as a replacement of depletions to usable Stateline flows.

3. Transit losses on releases of water from the Offset Account for delivery to the Stateline for the purposes of offsetting depletions to usable Stateline

flows shall be determined using the transit losses for Subreach 6, including bank and channel storage, as set forth in the U.S. Geological Survey Water Resources Investigations 78-75, unless the States agree to use a different method or the United States Supreme Court directs otherwise. The States agree to cooperate with each other, the Administration, and the U.S. Geological Survey to improve the method of determining transit losses between John Martin Dam and the Stateline. Transit losses on releases from the Offset Account for delivery to the Stateline for the purpose of offsetting depletions to usable Stateline flow shall be borne by such releases.

4. Colorado acknowledges that use of the Offset Account may result in additional monitoring costs to Kansas. Colorado agrees that Kansas is not waiving its right to claim reasonable compensation from Colorado for such additional monitoring expenses incurred by Kansas after effective date of the Resolution. Colorado shall timely share relevant information with Kansas concerning use of the Offset Account in a manner that will minimize Kansas' monitoring costs. Each year, the States shall discuss further ways to minimize such costs.

5. Neither the adoption of the Resolution nor the establishment or operation of the Offset Account shall constitute a waiver of either State's rights under the Compact (if such a waiver is possible as a matter of law) interests in present or future cases or controversies before the Administration or any court of competent jurisdiction; except that actual storage of

water in the Offset credits for deliveries of water to the Stateline in accordance with this Stipulation shall be considered in determining Colorado's Compact compliance; and provided further that Colorado shall receive credit for the delivery of water to the Stateline as a replacement of depletions to usable Stateline flows in accordance with this Stipulation.

DATED, this 17 day of March, 1997.

STATE OF KANSAS

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APPROVED:

/s/ Arthur L. Littleworth
Arthur L. Littleworth
Special Master
