

By John Milburn

Associated Press Writer

A federal arbitrator has ruled in favor of Kansas in disputes with Colorado and Nebraska over the use of water from the Republican River.

Kansas Attorney General Steve Six said Friday two issues were in play regarding a compact that governs use of the water that flows from Colorado, through Kansas to Nebraska and back into northern Kansas.

Arbitrator Marth Pagel, a Portland, Ore., water attorney, rejected Nebraska's request for water credits for payments made to Kansas for failing to comply with the compact.

Six said the plan to award water credits for paying fines or damages for taking too much water would have encouraged future compact violations and deprived Kansas residents of water.

Six issued a statement, saying the arbitrator's decisions send a message "that Kansas' concerns about their proposals are justified, appropriate and fair."

Nebraska Attorney General Jon Bruning said his state would continue to defend its right to use the water to which it is entitled. He claims Kansas is trying to recover damages twice—through monetary penalties and water—if Nebraska violates the compact.

"We are pleased the arbitrator recognized the importance of preventing a double recovery by Kansas, but disappointed the proposed crediting issue was not accepted," Bruning said, adding that the arbitrator did suggest Nebraska was on track for future compliance.

Additionally, The arbitrator agreed with Kansas' concerns about Colorado's plans to use a pipeline to put water in the river to comply with the compact. Six's office said the issues were technical and related to how Colorado would calculate the amount of water flowing across the state line.

If the states fail to reach agreement following the arbitrator's rulings, Six's office said it is likely the U.S. Supreme Court will again be asked to decide the matter.

Kansas officials contend that in 2005 and 2006, Nebraska used 25.7 billion gallons more in water from the Republican River than it was due—enough to supply a city of 100,000 people for almost 10 years. Nebraska officials acknowledged some overuse but questioned Kansas' accounting.

Nebraska was in compliance from 2007 through 2009. The arbitrator said last year that Nebraska's natural resource districts should cut back on water allocations to farmers to maintain compliance. Nebraska has rejected the suggestion.