

# REVIEW DRAFT

January 2015

NOT FOR RELEASE

Kansas Water Office and the  
U.S. Army Corps of Engineers,  
Kansas City District

## Update of 1982 Six State High Plains Aquifer Study Alternate Route B

Funded through Federal Planning Assistance to States Agreement (PAS) by the U.S. Army Corp of Engineers, the Kansas Water Office and Southwest Kansas Groundwater Management District No. 3

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## Introduction

The Water Resources Development Act of 1976 authorized the *Six-State High Plains-Ogallala Aquifer Regional Resources Study* (High Plains Study) to address the problem of depleting High Plains Ogallala aquifer water supplies. The U.S. Department of Commerce, in coordination with the U.S. Army Corps of Engineers (Corps) and other federal, state and private entities, examined the feasibility of various alternatives to provide adequate water supplies to “assure continued economic growth and vitality of the High Plains region.” The High Plains study included state-level research completed by each of the six states (Colorado, Kansas, Nebraska, New Mexico, Oklahoma and Texas), regional economic and policy assessments and a study of interbasin water transfers.

The Corps studied four alternative transfer routes and completed reconnaissance level designs and cost estimates for ranges of transfer quantities. The *1982 Alternative Route B Reconnaissance Study* (1982 Study) evaluated a route beginning on the Missouri River upstream of St. Joseph, Missouri and terminating in western Kansas. It is that route that was reevaluated in this update.

## Study Purpose and Authority

The Kansas Water Office (KWO) and the U.S. Army Corps of Engineers (Corps) Kansas City District entered into a Federal Planning Assistance to States (PAS) Agreement to update the 1982 Study. The Kansas Water Office partnered with the Southwest Groundwater Management District No. 3 for financial assistance, as well as coordination, public input and review. The Corps retained the services of HDR Engineering, Inc. to evaluate the engineering aspects of the water transfer system and cost estimates.

Technical updates include updated mapping of the proposed alignment, estimated water demand, estimated range of quantities of water available and general modernization of the design of the transfer facilities. Financial considerations include updates to the total estimated construction cost, project cost per unit of transferred water and summary of energy requirements and costs. The current study does not address the water distribution systems that would be needed to supply end-users from the terminal reservoir. The update provides a legal review, an overview of environmental constraints and a preliminary political assessment.

This study is not a federal feasibility study. Many assumptions and generalizations have been made to accomplish this update. Many topics were raised during the course of this study that would need to be addressed if a project of this nature were to move forward.

## Stakeholder Coordination

A Stakeholder Advisory Committee was formed by the KWO comprised of individuals from communities located geographically within the High Plains - Ogallala aquifer study area, in the area of the propose source reservoir, in areas along the proposed project route and that use the Missouri River. (For the purposes of this report, the High Plains – Ogallala aquifer and Ogallala aquifer are used interchangeably and refer the region of Kansas where the Ogallala formation exists). Stakeholders represent various use and interest categories such as city, county and tribal governments; public utilities; industries; agriculture and financial institutions.

The Stakeholder Advisory Committee convened at meetings held throughout the state to review findings from the technical, environmental, financial and legal reviews. The committee also assisted in identifying other issues impacting the feasibility of a Kansas aqueduct project and in providing recommendations on components of the study that would need further review.

## **Report Organization**

### **Chapter 1 – Water Demand Analysis**

Chapter 1 provides a water demand analysis for irrigation in the High Plains Aquifer region of Kansas and for counties along the aqueduct route. A municipal demand analysis is also included to estimate potential demand for communities along the route and in other basins.

### **Chapter 2 – Water Availability**

Chapter 2 provides estimates of the amount of water available at flow levels above Missouri River navigation requirements based on such factors as the holding capacity of system source reservoirs, size of the transfer feature and capacity of the pumping system.

### **Chapter 3 – Water Transfer System and Alternative Features**

Chapter 3 presents the 1982 Study Alternate B water transfer system components (reservoirs and conveyance systems) in light of updated GIS data, water demand forecasts and water availability. Conceptual-level alternatives to the 1982 Study are also evaluated.

### **Chapter 4 – Cost Estimates**

Chapter 4 provides preliminary cost estimates updating the 1982 Study Alternate B South Route projected costs to 2014 base year costs. The projected costs include a breakout of construction-related costs, anticipated annual recurring costs for maintenance and repair of the overall system and energy costs.

### **Chapter 5 – Legal Review**

Chapter 5 provides an evaluation of whether a Kansas aqueduct concept conflicts with existing legislation and what process and criteria would be required to comply with Kansas laws and requirements.

### **Chapter 6 – Environmental Constraints**

Chapter 6 provides a review of major federal and state environmental laws and regulations and evaluation of constraints that would be encountered if a project of this scope is ever undertaken.

### **Chapter 7 – Political Assessment**

Chapter 7 includes a preliminary political assessment of the expected reactions to various components of an aqueduct project within the State of Kansas and in other states with interest in the Missouri River.

# Update of 1982 Six State High Plains Aquifer Study

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## Chapter 1: Water Demand

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## 1.1 Introduction to Demand

The 1982 Study estimated demand for water to replace High Plains aquifer irrigation as estimated in 1977. The six states that lie wholly or partly over the High Plains aquifer is an important U.S. agricultural area with an estimated 90 million acres of irrigable land in 1982. Deterioration of the agricultural based economy was believed to have grave consequences for business and financial communities outside as well as within the region.

Although the 1982 Study did not look at demands other than irrigation, it was important in this update to do so. Therefore, municipal needs have also been considered. In many cases municipal use includes industrial as it is supplied through a city or rural water districts. However it does not include industrial use that has individual water appropriations, the largest generally energy related. Figure 1.1 (a) shows how water has been used within Kansas in recent years.

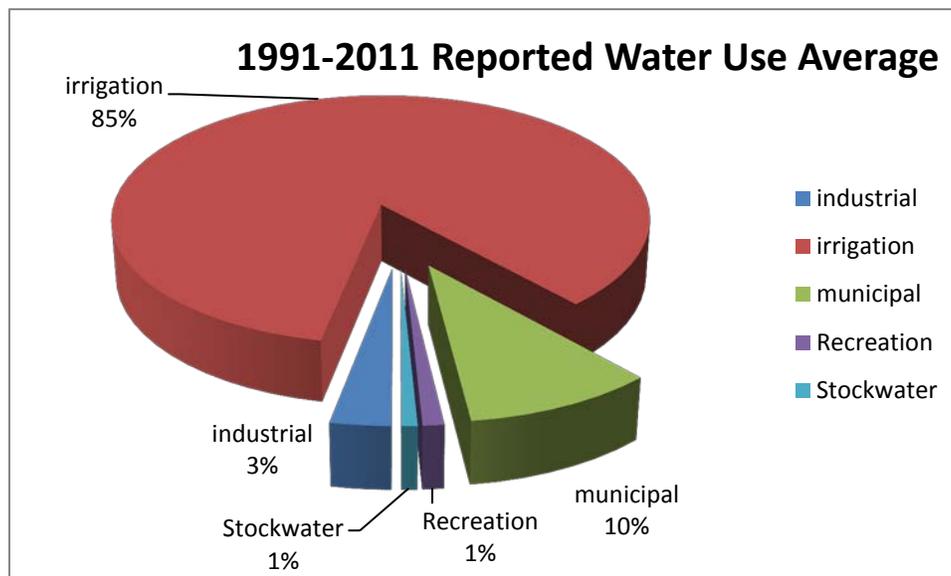


Figure 1.1 (a). Kansas Water Use.

## 1.2 Summary of 1982 Ogallala Water Transfer Demand

The 1982 Study provided costs on a range of flows to restore and maintain the maximum amount of irrigated lands projected to go out of production between 1977 and 2020 into the High Plains region from adjacent areas. The quantities required were generated by the states and provided to the U.S. Army Corps of Engineers (Corps) by the general contractor. The annual Kansas requirement was 862,000 acre feet (AF) of a total of 4,056,000 AF for the six states. The transfer alternative being updated in the present effort was Route B through Kansas in the original study.

## 1.3 Irrigation Demand

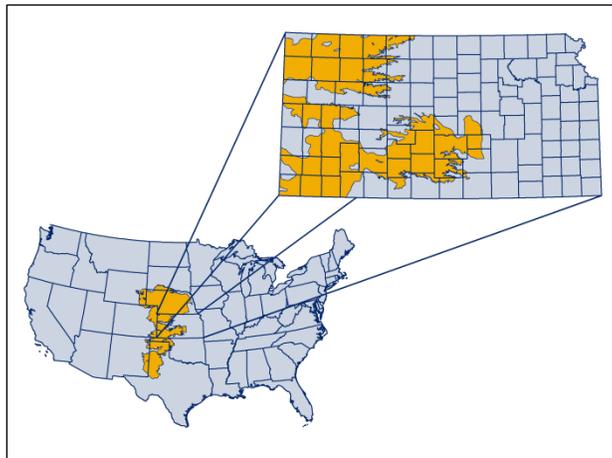
Irrigation is the largest water use in Kansas, accounting for an average of 85% of reported water use between 1991 and 2011. Approximately 3 million acres in Kansas are used for irrigated agriculture. Irrigation is most prevalent in western Kansas where average rainfall is less than 20 inches per year. Groundwater supplies more than 90 per cent (%) of irrigation water use in Kansas. The majority of groundwater used for irrigation comes from the Ogallala portion of the High Plains aquifer.<sup>1</sup>

For this study update, current reported water use for irrigation in the areas overlying the Ogallala - High Plains aquifer was summarized and projections were made to determine how much water is needed to sustain current levels as the aquifer continues to be depleted. Irrigation demands in the counties adjacent to the 1982 aqueduct route were also evaluated, recognizing that demands may increase in these counties if a supplemental water source is made available. Additionally, farm acreage in counties adjacent to the 1982 route was evaluated for potential conversion from dry land farming to irrigated farming.

### 1.3.1 Irrigation in the High Plains Aquifer Region

The High Plains aquifer is a regional aquifer system which lies beneath parts of eight states in the Great Plains, including approximately 30,500 square miles of western and central Kansas.

The High Plains aquifer Figure 1.3 (a), consists of several smaller sub-regional aquifers including the Ogallala formation in western Kansas and shallower and geologically younger Great Bend Prairie and Equus Beds aquifers in south central Kansas. The Ogallala formation and associated younger deposits is the primary source of water in western Kansas, with irrigation being the primary use.



**Figure 1.3 (a). High Plains Aquifer System in Kansas.**

One measure of the amount of groundwater available in the aquifer is saturated thickness, the distance from the water table to the base of the aquifer. The saturated thickness of the aquifer has been studied fairly extensively. The Kansas Geological Survey (KGS) utilizes groundwater well monitoring data to make projections about the aquifer based on past trends in water level declines. The saturated thickness in the aquifer varies greatly across the state. In general, the thickest groundwater deposits are found in southwestern Kansas.

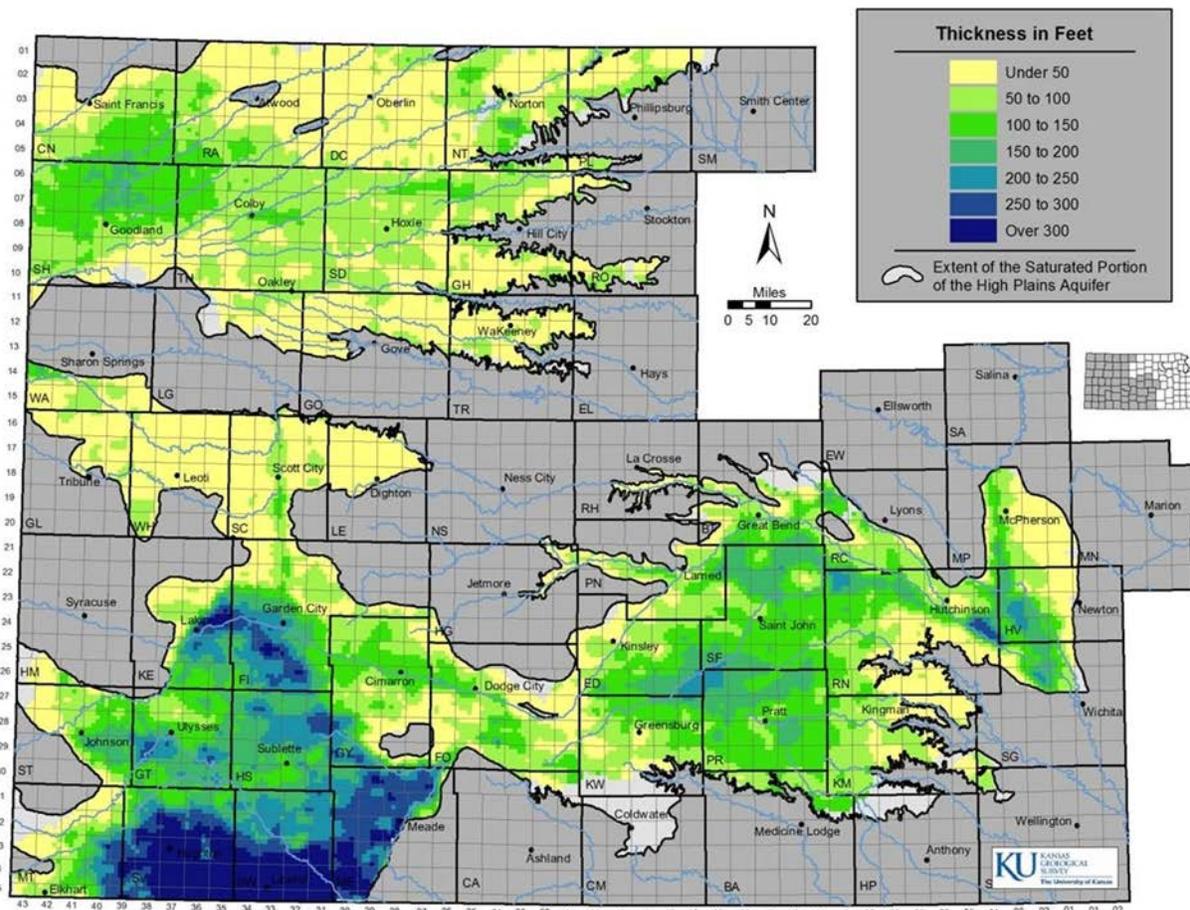
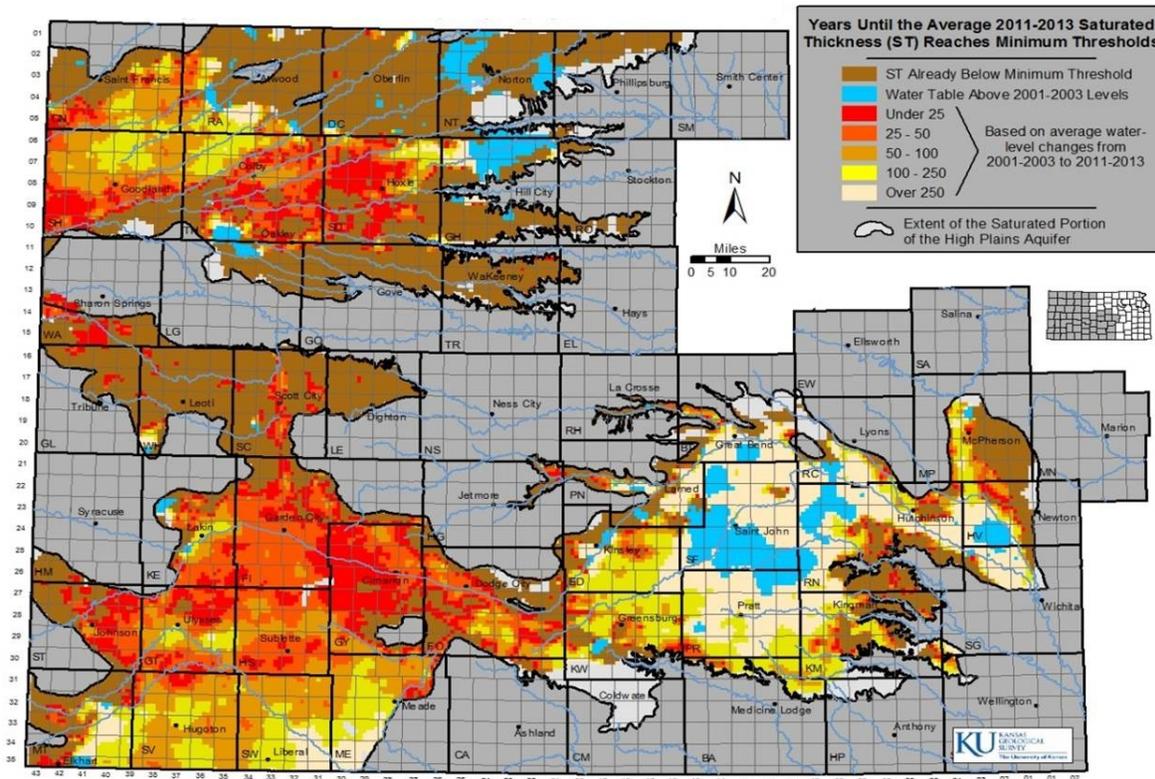


Figure 1.3 (b). Average 2010 – 2012 Saturated Thickness, Kansas High Plains Aquifer.

### 1.3.2 Estimated Usable Life of the High Plains Aquifer

KGS developed a methodology for estimating the usable lifetime of the aquifer based on the relationship between saturated thickness of the aquifer and well yields. The method estimates how many years it would take to reach the point that the saturated thickness of the aquifer is too low to sustain a 400 gallon per minute (gpm) well, the approximate flow required to operate a low-pressure sprinkler irrigation system.<sup>2</sup>

Figure 1.3 (b) illustrates the variability of saturated thickness in the aquifer. Figure 1.3 (c) illustrates the estimated time the aquifer would support a 400 gpm well. Areas in brown are already below the 400 gpm threshold while areas in blue have experienced an increasing trend. Areas in red, orange and yellow are the areas projected to decline to levels unable to support 400 gpm over the next hundred years or less if current pumping rates continue. The estimated usable lifetime dataset combined with an estimate of current irrigation water use, provides a tool to quantify irrigation demands in the High Plains over time.



**Figure 1.3 (c). Estimated Usable Lifetime for the High Plains Aquifer in Kansas.**

*(Based on groundwater trends from 2001-2003 to 2011-2013).*

### 1.3.3 Current Irrigation Levels in the High Plains Aquifer

In Kansas, the administration of water rights and regulation of water use are the responsibility of the Kansas Department of Agriculture, Division of Water Resources (DWR). Water right owners are required to report annually on the amount of groundwater diverted and the total number of acres irrigated. The reported water use data are available from the Water Information Management and Analysis System (WIMAS), which is publicly accessible online.<sup>3</sup>

Reported irrigation water use for the years 2007-2012 was obtained from WIMAS for the townships that overlie the aquifer. These years represent the most recent years for which complete water use data is available and they span both wet and dry years. The total quantity reported in acre feet (AF) for each township was summed and averaged for each of the 5 years.

While the annual water use report includes a reporting of the quantity of acres irrigated for that year, the report does not designate the particular acres irrigated. In addition, Kansas' system of water rights allow for overlapping places of use and points of diversion between water rights. Township averages cannot account for the complexity of reported water use data but are an appropriate estimation for this level of large-scale demand analysis.

The estimated usable lifetime map was aggregated by township in Figure 1.3 (d). The process of aggregation results in some loss in resolution of the data since each township is assigned a single value for time to deplete.

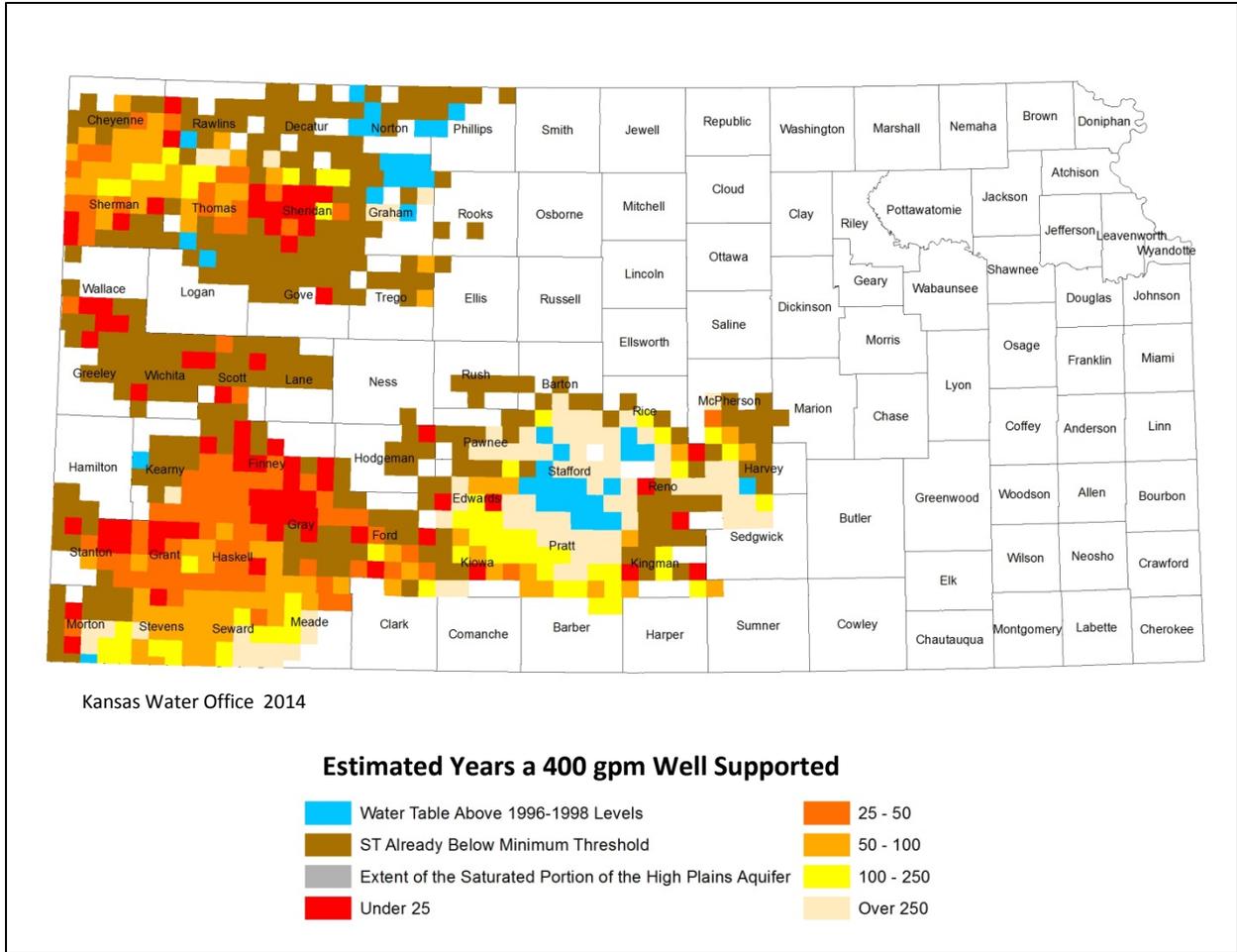


Figure 1.3 (d). Estimated Usable Lifetime by Township.

By using the 5 year average water use and projecting that out over 100 years against the time to deplete, the approximate amount of water needed to replace current irrigation levels is derived.

Table 1.3 (a). Quantity of water needed to replace current irrigation demand over time	
Years	Irrigation Demand in acre feet (AF)
5	354,420
10	528,731
25	1,000,433
50	1,862,620
100	2,657,808

In one respect, this methodology may over predict irrigation demand to some extent because it assumes that irrigation ceases once the 400 gpm threshold is met. The reality is that irrigation continues in areas that are already below the threshold today. When wells can no longer sustain rates to fully irrigate,

limited irrigation continues. Irrigators make changes to their operations such as using different crop varieties and rotations or decreasing plant density. In another respect, the estimate under predicts demand because it assumes that current irrigation levels would remain steady. If additional supply is made available to areas that are no longer able to sustain full irrigation, demand could be higher than present day in those areas.

#### **1.3.4 Additional Demand along Aqueduct Corridor**

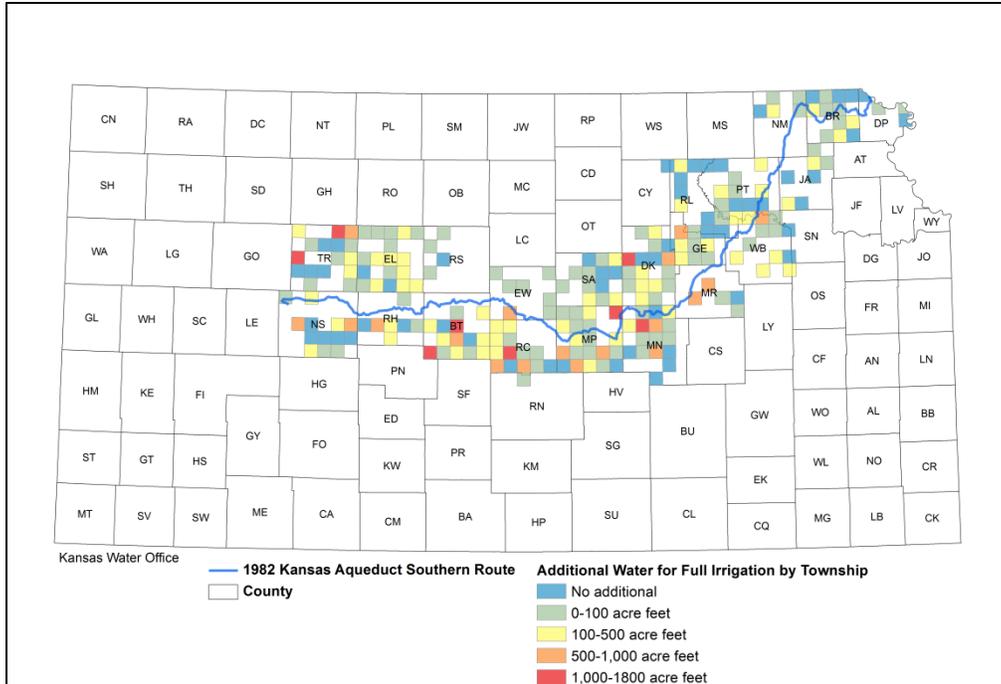
Although the areas overlying the High Plains account for the majority of irrigated lands in Kansas, other portions of the state may experience increasing demand if new supply becomes available, particularly in the areas near the water transfer system.

Potential demand along the water transfer system was evaluated by comparing the amount of current irrigation water use to the net irrigation requirements in each county adjacent to the 1982 route. Net irrigation requirement (NIR) values are the water needs for a specified crop over and above effective rainfall and carryover soil moisture. NIR values for Kansas were developed by what is now the Natural Resource Conservation Service in consultation with Kansas State University through its experiment stations.<sup>4</sup> Values are calculated for each county for both the 50% and 80% chance rainfall. Kansas statutes related to authorized quantities for water rights are based on the NIR for the 50% chance rainfall for corn.

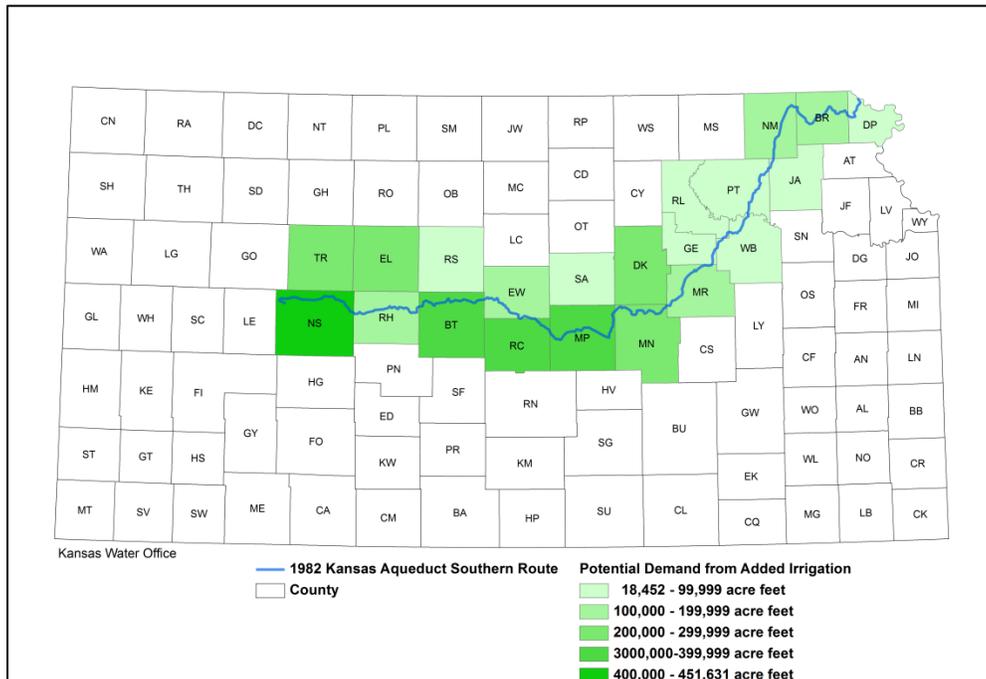
The NIR values for the 50% chance rainfall were used to calculate the number of acre feet required to grow corn on currently irrigated lands in those counties along the route. That amount was compared to 2007-2012 irrigation water use to determine the deficit between NIR and current rates. Some counties along the route are already using water to the extent needed to meet NIR for the acres in irrigation. Table 1.3 (b) summarizes the counties that had deficits between their current water use and the NIR application rate, indicating a potential new demand should additional supply be available.

<b>Table 1.3 (b). Deficit between NIR application rate and current irrigation water use in acre feet (AF)</b>	
<b>County</b>	<b>Quantity</b>
Barton	5,430
Brown	857
Dickinson	3,175
Doniphan	47
Ellis	2,431
Ellsworth	1,203
Geary	1,640
Jackson	747
Marion	3,808
McPherson	4,562
Morris	1,246
Nemaha	245
Ness	2,021
Pottawatomie	1,355
Rice	4,460
Rush	1,323
Riley	405
Russell	145
Saline	848
Trego	4,552
Wabaunsee	1,226
<b>Total</b>	<b>41,726</b>

If additional supply becomes available in areas along the water transfer system, counties may experience a shift from dry land to irrigated farm acreage. To evaluate potential demand resulting from this shift, county-level data were obtained from the National Agricultural Statistics Service to determine how many acres are currently in dry land farms.<sup>5</sup> Net irrigation requirements were applied to the acreage to calculate quantities for each county.



**Figure 1.3 (e). Additional Water Needed to Support Full Irrigation in Townships along Aqueduct Route.**



**Figure 1.3 (f). Additional Water Needed for Conversion of Dry Land Farms to Full Irrigation.**

<b>Table 1.3 (c). NIR applied to land currently in dry land farms in acre feet (AF).</b>	
<b>County</b>	<b>Quantity</b>
Barton	382,122
Brown	134,530
Dickinson	259,349
Doniphan	80,689
Ellis	255,779
Ellsworth	174,560
Geary	37,976
Jackson	83,442
Marion	269,600
McPherson	330,175
Morris	108,685
Nemaha	167,756
Ness	451,631
Pottawatomie	96,569
Rice	318,483
Rush	67,474
Riley	133,695
Russell	84,330
Saline	18,452
Trego	270,908
Wabaunsee	65,397
<b>Total</b>	<b>3,791,603</b>

### 1.3.5 Summary of Irrigation Demand

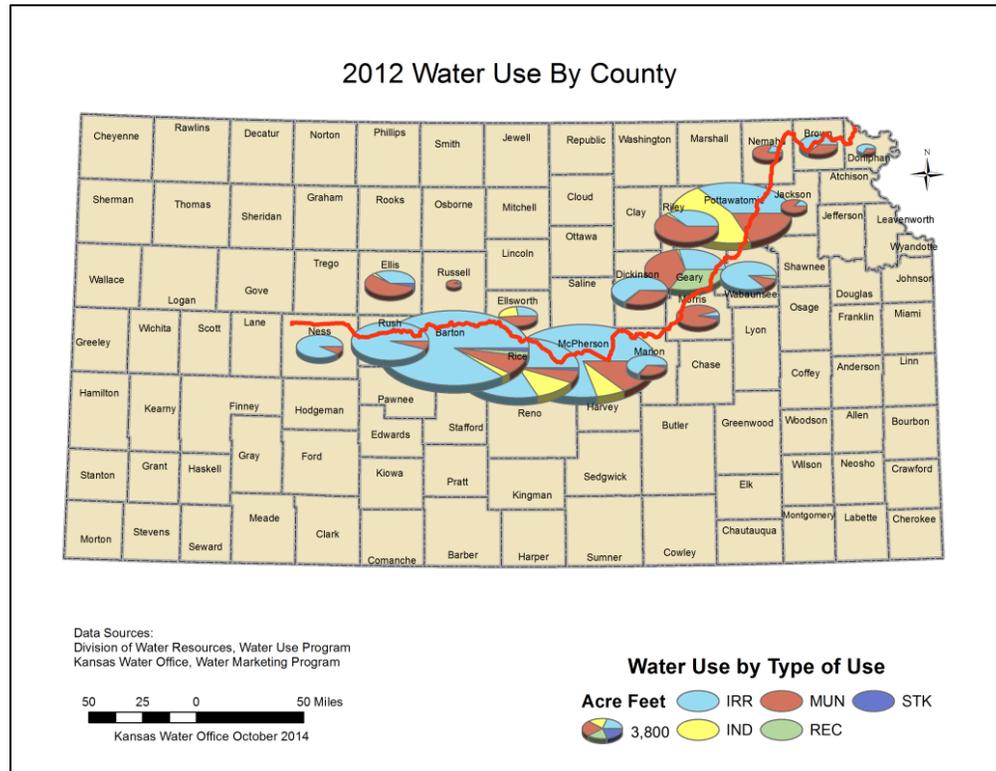
Demand for additional supply in areas that are currently irrigated in the High Plains would increase over time as the aquifer is depleted. If trends in water level declines continue, in the next twenty five years over one million acre feet of additional water would be needed to sustain current levels of irrigation. That amount increases to approximately 2.7 million acre feet (MAF) over the next hundred years.

As water is transferred across the state, additional irrigation demand may increase in counties along the way. Over 40,000 AF is needed to supply the deficit between current water use and net irrigation requirements for the currently irrigated acres in counties along the route. In order to convert dry land farms to irrigated corn in those counties, an additional 3.8 MAF is needed.

Based on current trends and available data for areas overlying the High Plains aquifer and those areas adjacent to the aqueduct, the total potential irrigation demand ranges between 4.2 and 6.5 MAF. Future irrigation demand in Kansas would ultimately be determined by a variety of factors including market trends, energy prices, climate and the return on investment to irrigate.

## 1.4 Municipal Demand

Municipal or public water supply, water use is the second largest water use in Kansas, accounting for an average of 9.9% of reported water use between 2008 and 2012. In eastern Kansas, the primary source of water is surface water; in western Kansas, the primary source is groundwater. In general, the percentage of municipal use increases from west to east across the aqueduct route being evaluated. (Figure 1.4(a)).



**Figure 1.4 (a). Kansas Water Use by County in 2012.**

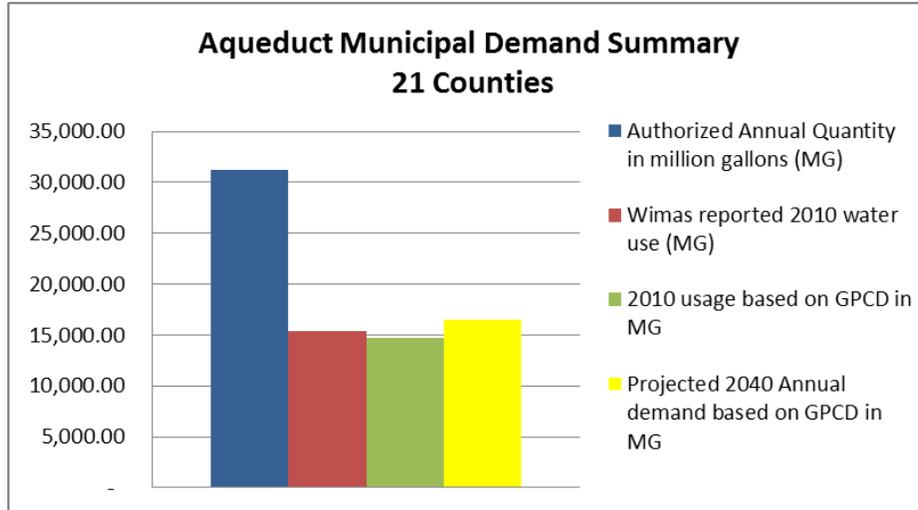
An important metric to measure and compare municipal water use by PWS systems is the amount of water used per person per day, called gallons per capita per day (GPCD). Average GPCD is calculated for eight regions that are composed of tiers of counties which correspond to general patterns of precipitation and per capita use. Average GPCD is also determined for different sizes of public water suppliers in the eastern half of the state so that individual systems can be compared to the average used by systems of similar size and geography. In 2012, the average GPCD by region ranged from a high of 316 in the western most counties to a low of 81 for small PWS systems in eastern Kansas. The 5 year average ranges from 272 to 80 GPCD.<sup>7</sup>

### 1.4.1 Estimation of Demand

For this study update, municipal demand was evaluated for three different groups of municipal users: 1) the 21 counties along the aqueduct route; 2) the counties along the I-135 corridor in south central Kansas and 3) counties that experienced significant drought issues from 2011-2014.

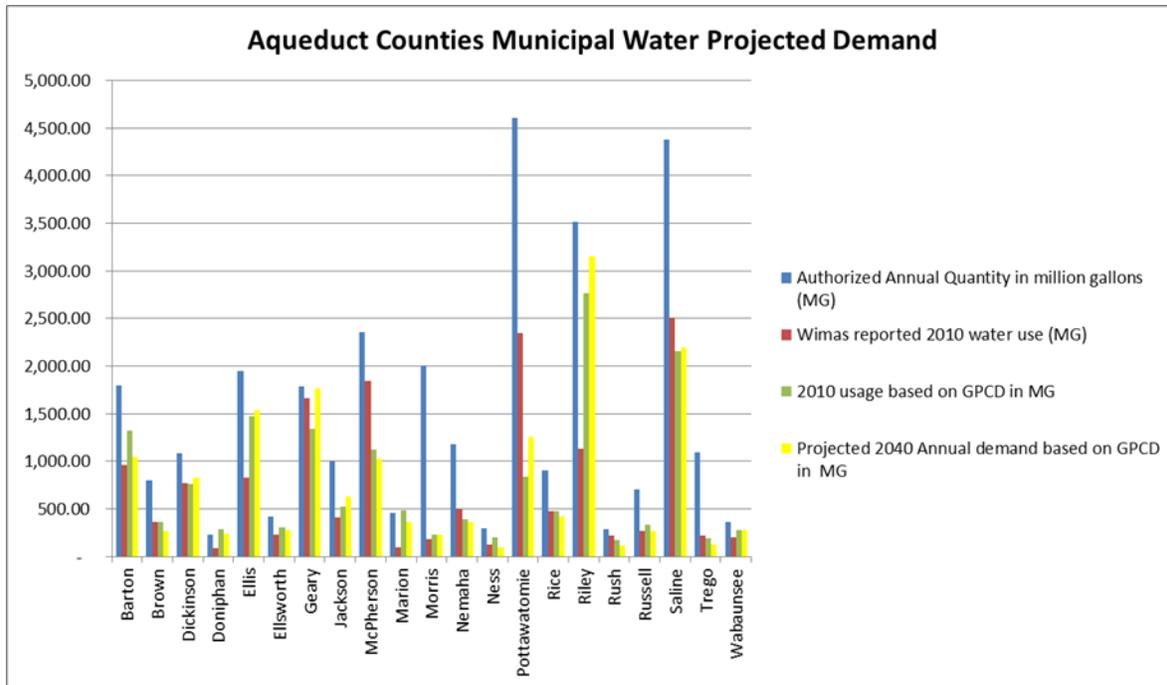
For each group of counties, a current (2010) demand was determined and a projected future demand was estimated. Current demand utilized actual municipal reported water use summarized by county as





**Figure 1.4 (c). Municipal Demand Estimates for Counties along Aqueduct Route.**

Population for these 21 counties in 2040 is projected to increase by about 4% from 2010 population. Individual counties varied from decreases in population of 49% to increases of 50%. Demand for the individual counties only exceeded authorized quantity in Doniphan County; however this county only has 232 MG authorized for municipal use, a very small percentage of total use in the corridor. The Doniphan County projection estimated 10.1 MG per year additional water would be needed in 2040. The entire group has a total authorized quantity exceeding 2040 demand by 14,705 MG per year. Reported 2010 water use for the 21 counties is slightly below the projected 2040 annual demand of 16,480 MG. Projections indicate Barton, Dickinson, Doniphan, Ellis, Ellsworth, Geary, Jackson, Marion, Morris, Riley and Wabaunsee counties' annual demand in 2040 would exceed 2010 reported use. The remaining ten counties are projected to use less water than in 2010 (Figure 1.4 (d)).



**Figure 1.4 (d). Municipal Demand Estimates Aqueduct Counties - Method Comparison.**

### 1.4.3 Demand in I-135 Corridor

The counties along Interstate-135 from Salina to Wichita contain major population centers in south central Kansas, including Hutchinson, Lindsborg, McPherson, Newton, Salina and Wichita. Many of these communities supply water to other communities and rural water districts, while others in the area continue to have their own sources of supply, including Bel Aire, Halstead, Hesston, Mound Ridge, Park City, Sedgwick and Valley Center. This area represents a population of 677,511. As early as 1982, this area was looking at the possibility of cooperating on a project to transport water into the region from Milford Reservoir. Though that project did not proceed, the area is one of significant economic importance. This area was evaluated to determine what kind of demand may be exerted if an aqueduct project could be designed to drop off or pipe water to this area.

The five counties evaluated for this area are shown in Figure 1.4 (e). The reported use for the counties in 2010 was 28,515 MG for the year, only 35% of the authorized annual quantity of 92,080 MG. Estimated 2010 usage based on regional GPCD was just slightly less at 27,042 MG (Figure 1.4 (f)).

### 1983 Municipal Study - I-135 Corridor Counties

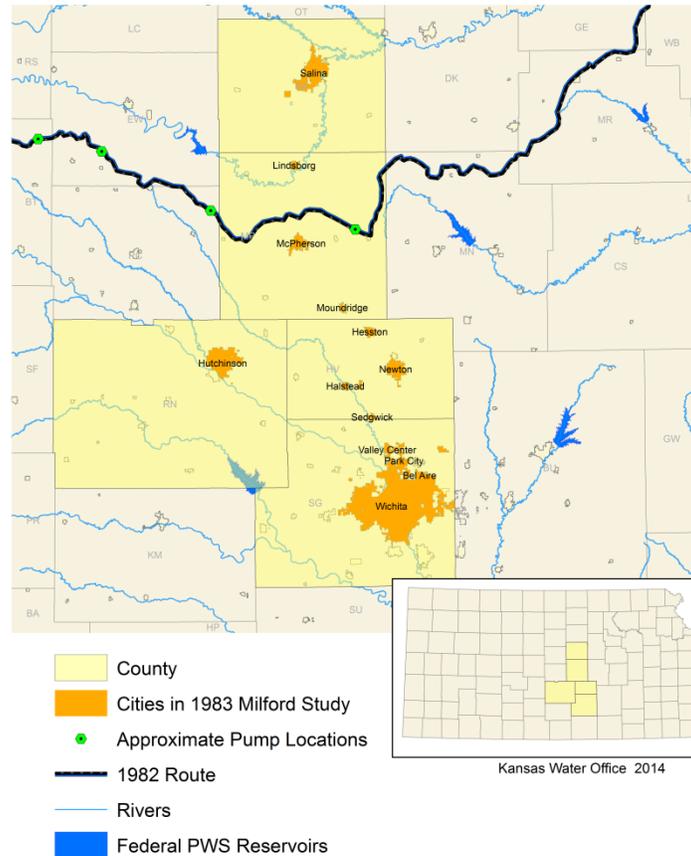


Figure 1.4 (e). I-135 Corridor Counties.

Projected demands for Harvey, McPherson, Reno, Saline and Sedgwick counties totaled 31,256 MG for 2040, slightly more than estimated GPCD 2010 usage but slightly less than actual reported water use in 2010 (Figure 1.4(g)). Sedgwick County’s demand for 2040 exceeds reported 2010 use while the other four counties 2040 demand is less than 2010 reported use.

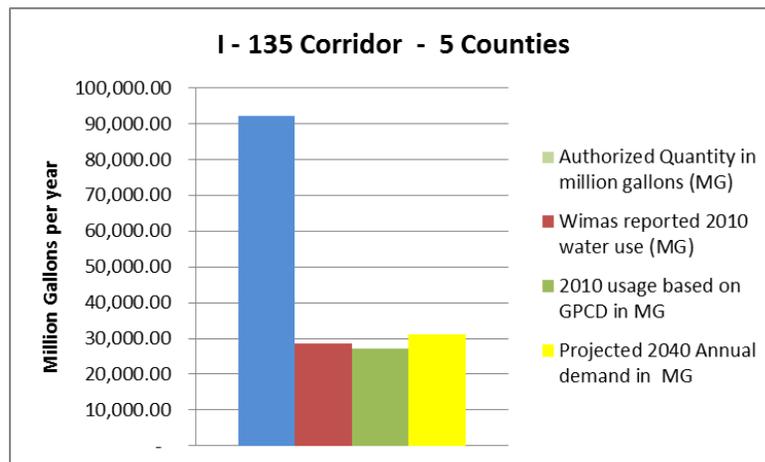
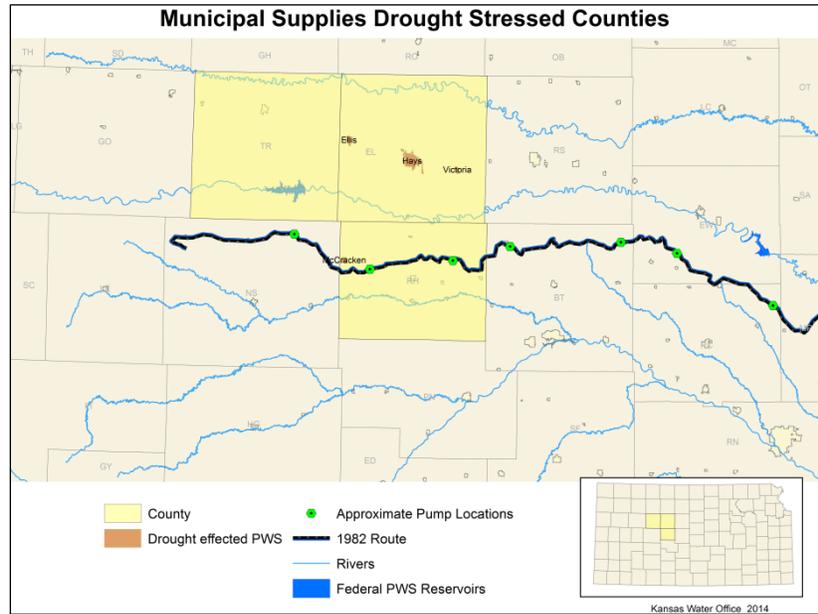


Figure 1.4 (f). I-135 Corridor County Municipal Use.

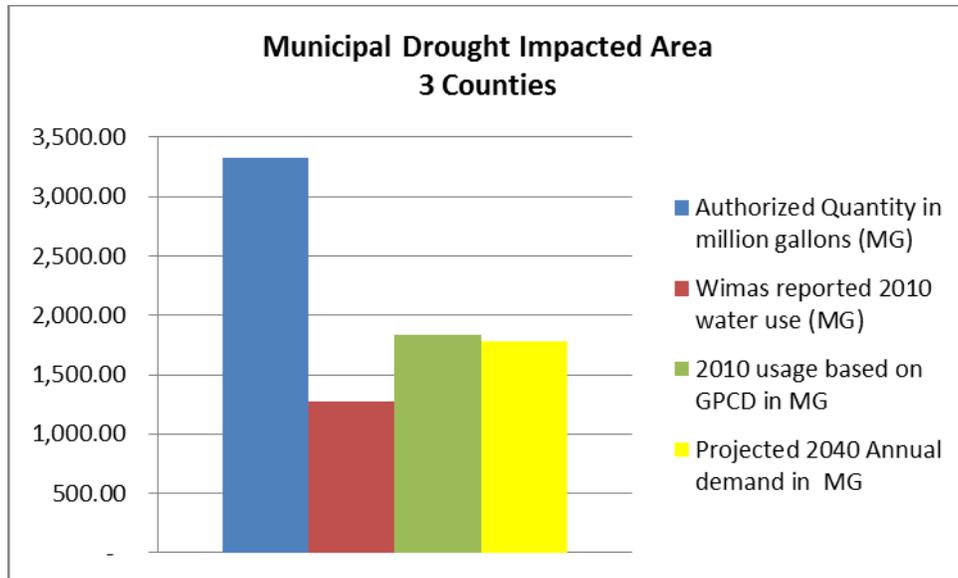
#### 1.4.4 Demand Related to Drought

Communities in central Kansas that obtain water from local alluvial aquifers had wells with major declines and little or no recharge during the recent drought (2011-2014). Communities that enacted emergency conservation stages include Ellis, Hays, McCracken, Trego County Rural Water No. 2 and Victoria (Figure 1.4 (g)). An analysis was made to determine demand that may be exerted if an aqueduct was able to deliver water.



**Figure 1.4 (g). Counties with Demands Related to Drought.**

The annual quantity authorized for municipal use in Ellis, Rush and Trego counties totals 3,331MG. Reported 2010 water use was 1,270 MG. Estimated usage based on GPCD was 1,834 MG. Projected demand in 2040 totals 1,777 MG, less than estimated usage but an increase from 2010 reported use (Figure 1.4 (h)). The total, as well as all three counties individually, have sufficient water appropriations to meet estimated 2040 demand, but as demonstrated by the recent drought, actually obtaining that water can be problematic. Only Ellis County municipal supplies are estimated to need additional water in 2040.



**Figure 1.4 (h). Drought Impacted Counties Municipal Water Use.**

#### 1.4.5 Total Demand for Identified Counties

A summary of information for all counties analyzed shown in Table 1.4 (a). Even with all three areas added together, the total of 44,513 MG is barely 137,000 AF, compared to the projected demand for irrigation of 2.7-6.5 MAF.

**Table 1.4 (a).**  
**County Municipal Use and Estimated Demands.**  
 in Million Gallons (MG)

County	Authorized Annual Quantity	Reported 2010 water use	2010 usage based on GPCD	Projected 2040 Annual demand based on GPCD
Barton	1,796.42	956.75	1,319.26	1,044.78
Brown	797.43	362.18	360.80	262.71
Dickinson	1,080.96	768.91	761.92	824.25
Doniphan	231.63	86.64	287.11	241.69
Ellis	1,944.31	823.36	1,473.73	1,536.20
Ellsworth	416.57	227.13	308.98	281.25
Geary	1,785.82	1,663.06	1,337.91	1,768.25
Harvey	22,692.71	5,280.17	1,336.38	1,539.14
Jackson	997.64	408.24	522.24	626.04
McPherson	2,352.76	1,843.73	1,121.23	1,028.97
Marion	454.08	100.71	487.17	363.73
Morris	2,001.32	178.35	227.53	226.05
Nemaha	1,178.06	496.38	390.39	366.31
Ness	292.16	126.67	197.89	100.80
Pottawatomie	4,609.53	2,344.17	838.12	1,253.57
Reno	4,537.48	3,327.24	3,073.84	2,797.21
Rice	902.29	477.57	480.02	417.63
Riley	3,514.23	1,128.07	2,764.20	3,155.23
Rush	289.96	224.68	169.48	113.82
Russell	699.52	267.55	331.19	268.33
Saline	4,377.48	2,507.34	2,154.00	2,194.64
Sedgwick	62,373.25	18,757.20	19,356.91	23,696.71
Trego	1,097.09	221.83	190.26	127.33
Wabaunsee	365.55	199.23	273.97	278.70
<b>Total</b>	<b>120,788.25</b>	<b>42,777.17</b>	<b>39,764.53</b>	<b>44,513.33</b>

#### 1.4.6 Municipal Demand – Quantitative Considerations

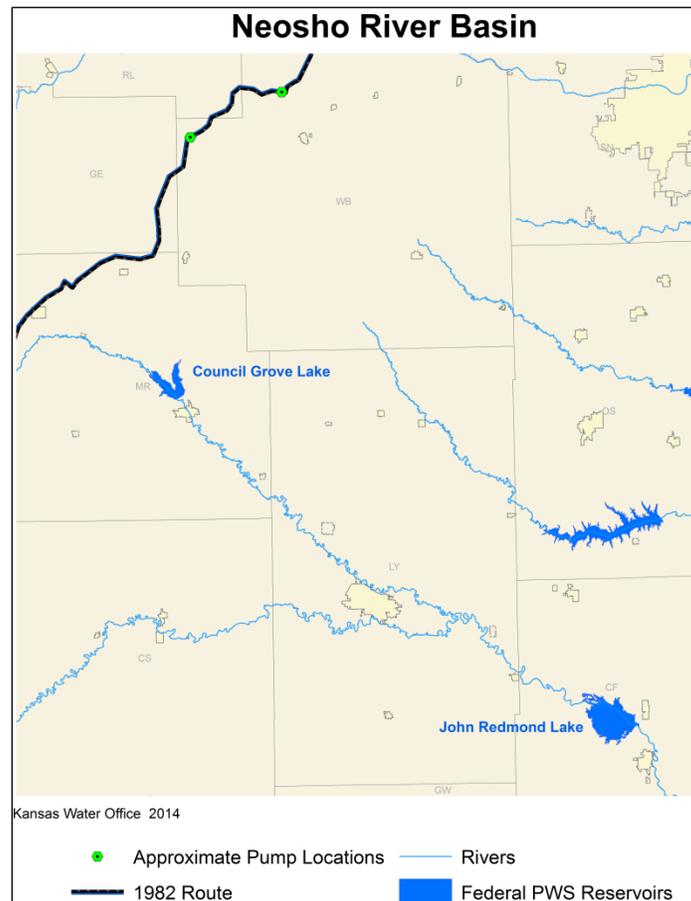
There are vast differences in treatment of ground and surface water to produce a potable water supply that meets Safe Drinking Water Act standards. More than half of the municipal demand analyzed in this section is currently supplied from groundwater. Surface water treatment would have to be developed. In addition, public water supply demand is a 24/7 demand; supply that could be delivered from an aqueduct would be intermittent, at best. The planning horizon on a project of this scale would be decades long and construction itself also decades long. Most of the large municipalities in the state that could benefit from an additional supply are currently in the planning process to meet their needs 50 – 60 years into the future.

### 1.4.7 Surface Water Basins

The aqueduct design as proposed in 1982 would run along ridge lines to take as much advantage as possible of gravity flow between pump stations. The proposed route opens the possibility of dropping off water into surface water basins that are anticipated to run short of supply in the future, especially the Neosho and the Kansas.

#### 1.4.7.1 Neosho Basin

The 1982 aqueduct route follows the ridge adjacent to the upper end of the Neosho River (Figure 1.4 (j)). This basin has faced much scrutiny since a 2006 analysis of supply and demand in eastern Kansas basins indicated that the Neosho basin could experience supply deficit during an extended drought as early as 2012. Focused efforts have pushed that time out to 2023 (Figure 1.4 (k)).



**Figure 1.4 (g). Aqueduct Route Relationship to Neosho Basin.**

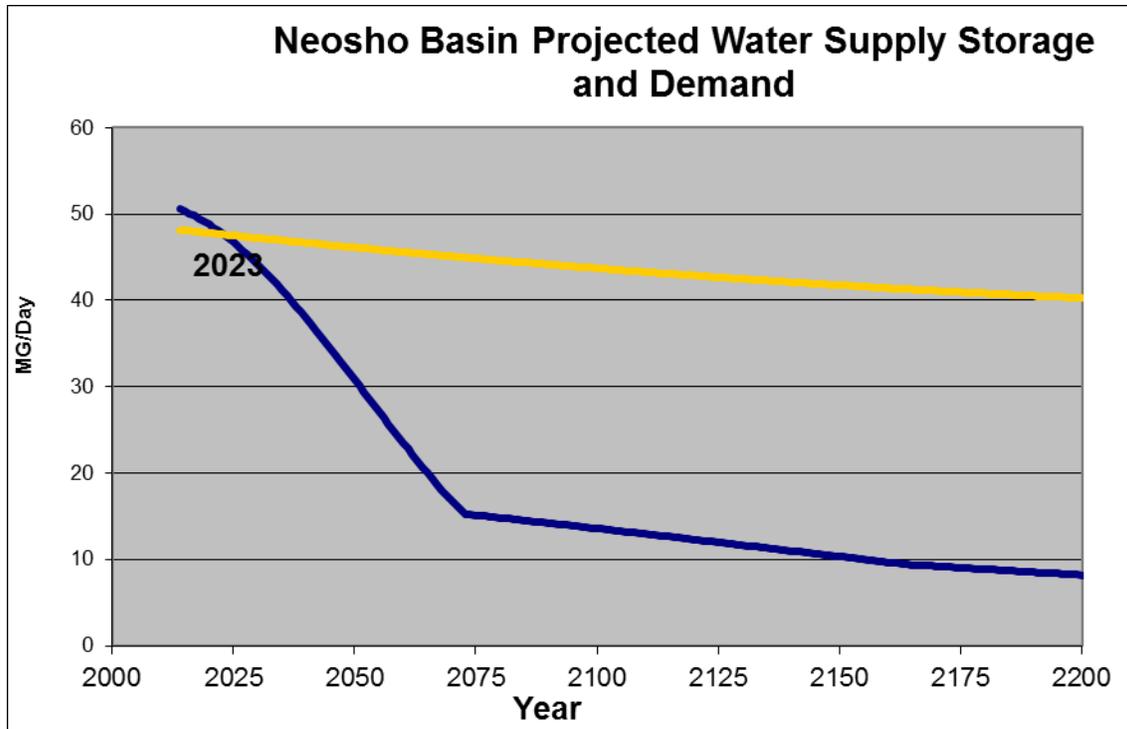


Figure 1.4 (j). Neosho Basin Projected Demand.

#### 1.4.7.2 Kansas Basin

The Kansas basin is the most populous of the 12 major river basins in the state. Surface water makes up almost 59% of the water used in the basin for all uses; 43% of the surface water in the basin is for municipal purposes. The aqueduct route offers two possibilities for supplementing supply in this basin. The aqueduct would cross the upper end of the Delaware River above Perry reservoir. In addition, the aqueduct crosses the Kansas River east of Manhattan (Figure 1.4 (l)). Supply and demand estimates indicate this basin does not experience shortages until 2064 with all storage under contract being utilized (Figure 1.4 (m)). Tuttle Creek Reservoir has lost almost 43% of storage to sedimentation.

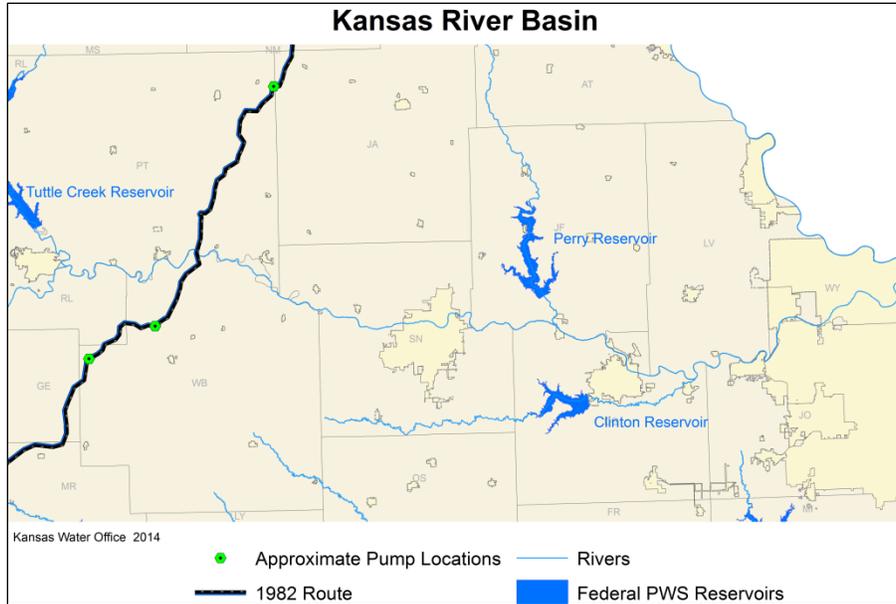


Figure 1.4 (k). Aqueduct Route in Relation to the Kansas Basin.

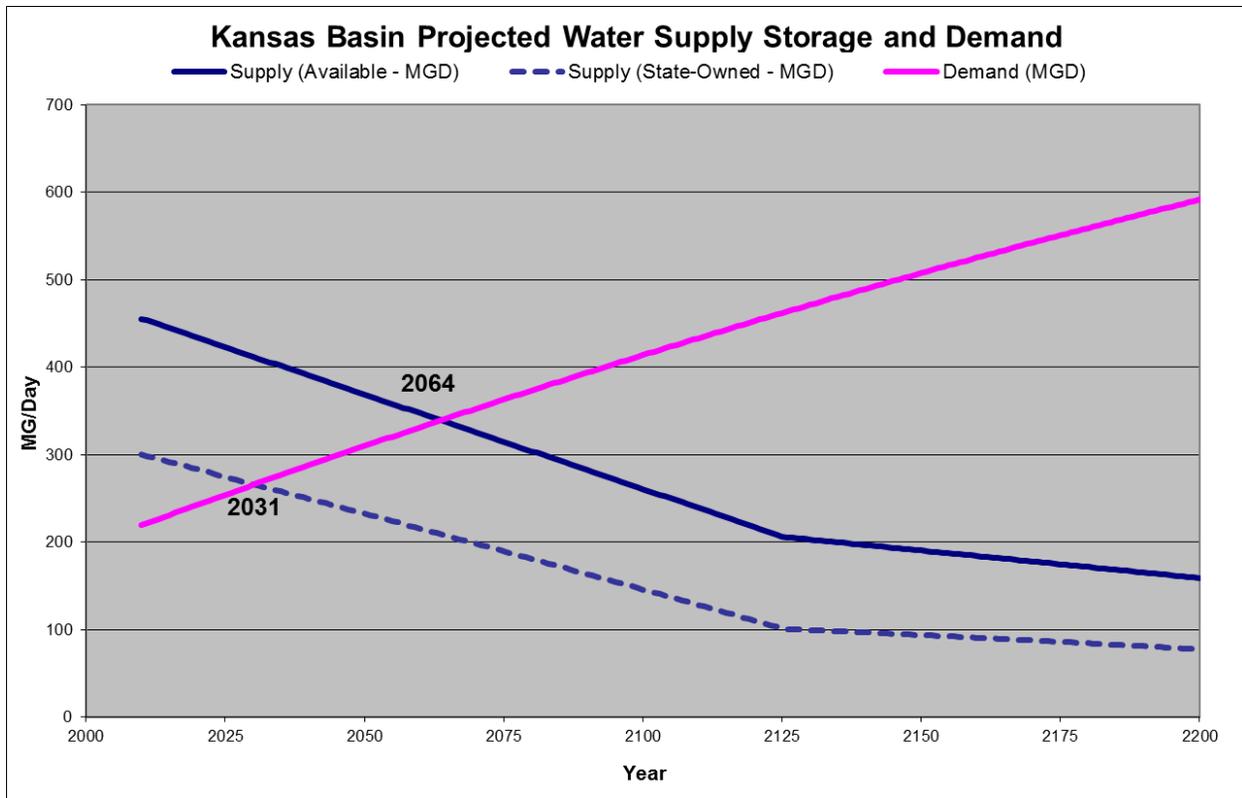


Figure 1.4 (l). Kansas Basin Projected Demand.

### 1.4.8 Summary of Municipal Demand

While an important consideration, municipal demand is small in comparison to agricultural needs. When all counties evaluated are totaled, demand does not exceed existing water appropriations. It is

recognized that reported water use less than authorized quantities may be due to lack of need or inability to access the groundwater source. Projected 2040 demand is only 37% of authorized annual quantity and less than 2,000 AF more than reported used in 2010.

Other interests for water that may be met with dropping off water along the way, has not been further evaluated.

## 1.5 Summary of Findings

An update of demand assumed replacement of current irrigation levels once 400 gallons per minute could not be supported. Full replacement would require over 1.8 million acre feet (MAF) in 50 years and over 2.6 MAF in 100 years. Adding potential demand for irrigation along the route would increase to a total for irrigation ranging from 4.2-6.5 MAF. Municipal demand along the route for the areas with known drought concerns adds only another 0.1 MAF of demand. Consideration is given in the study to the possibility of supplementing reservoir storage in surface water basins along the route that are expected to have shortages in the next 50 years; however this amount has not yet been quantified.

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<sup>1</sup> Kenny, J.F., and Juracek, K.E. 2013. *Irrigation trends in Kansas, 1991–2011*. U.S. Geological Survey Fact Sheet 2013–3094. 4 p. <http://pubs.usgs.gov/fs/2013/3094/>.

<sup>2</sup> Water Information Management and Analysis System (WIMAS) for the Web. <http://hercules.kgs.ku.edu/geohydro/wimas/index.cfm>.

<sup>3</sup> Wilson, B.B., Young, D.P., and Buddemeier, R.W. 2002. *Exploring Relationships between Water Table Elevations, Reported Water Use, and Aquifer Lifetime as Parameters for Consideration in Aquifer Subunit Delineations*, 19. [http://www.kgs.ku.edu/HighPlains/OHP/2002\\_25D.pdf](http://www.kgs.ku.edu/HighPlains/OHP/2002_25D.pdf).

<sup>4</sup> USDA Natural Resource Conservation Service. 2007. *National Engineering Handbook Part 652 Irrigation Guide: KS652.048 State Supplement – Water Requirements*. 1-2.

<sup>5</sup> National Agricultural Statistics Service. 2012. *Census of Agriculture County Data: Table 1. County Summary Highlights: 2012*.

<sup>6</sup> Kansas Department of Agriculture and U.S. Geological Survey. 2011. *Kansas Municipal Water Use 2011*.

<sup>7</sup> Wichita State University. 2012. *County Population Forecast: 2010 to 2040*. <http://webs.wichita.edu/depttools/depttoolsmemberfiles/wsunews/Population%20forecast.pdf>.

# Update of 1982 Six State High Plains Aquifer Study

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## Chapter 2: Water Availability

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Under the U.S. Army Corps of Engineers (Corps) 1982 Reconnaissance Study, quantification of water availability was simplified through assumptions. Availability would occur when Missouri River flows exceeded the baseflow established for navigation, i.e. “Withdrawals from the Missouri River would not be taken when the streamflow was equal to or less than an established navigation baseflow.” Storage of the diverted water would take place in a source reservoir 35 miles upstream of St Joseph, Missouri, and would then eventually undergo aqueduct transfer 360 miles westward to a terminal reservoir in western Kansas to support aquifer recharge, crop irrigation and other beneficial water uses.

The current study updates the water availability portion of the 1982 Study. Additional hydrologic data have been considered and the operation of the Missouri River mainstem projects for downstream needs has been incorporated. The study incorporates Missouri River flow data at Saint Joseph from 1898 through 2013.

The amount of water that could be available for transfer is entirely dependent upon the diversion rate, the storage capacity of the reservoirs and the transfer rate of the aqueduct. This is discussed more fully in Chapter 3 Water Transfer System.

## 2.1 Summary of 1982 Study Water Availability

The 1982 Study utilized stream gage data through 1975, considering diversions of 10,000 cubic feet per second (cfs), 20,000 cfs and 30,000 cfs when flows exceeded that needed for navigation or winter flow targets. The annual available volume estimated for each diversion rate is provided in Table 2.1 (a).

<b>Peak Missouri River Diversion Rate</b>	<b>1982 Average Annual Available Volume in million acre feet (MAF)</b>		
	<b>1975</b>	<b>2000</b>	<b>2020</b>
10,000 cfs	2.9	2.1	1.6
20,000 cfs	3.8	2.7	2.1
30,000 cfs	4.1	2.9	2.2

These diversion rates are based on the maximum pumping rates while flows above required levels are available. An analysis of delivery system reliability and drought operations was not provided in the 1982 Study, now is included in this update.

The study also determined that the ability to meet demands did not rest solely on water availability and pumping rates, but that terminal storage and canal capacity would also affect the ability to meet demands.

## 2.2 Methodology and Approach

Rather than determining specific constraints for the size of aqueduct components, an interactive program (model) was developed by the Corps to provide different water availability amounts based on user determined assumptions. The goal was to maintain a maximum amount of flexibility to create a useful tool for analysis.

### **2.2.1 Water Availability Constraints**

The Missouri River extends 2,341 miles from Three Forks, Montana, to the confluence with the Mississippi River in Saint Louis. The River includes water draining from portions of ten U.S. States and two Canadian provinces. The Missouri River basin has been extensively developed for irrigation, flood control and the generation of hydroelectric power.

The Corps has constructed and operates six dams (Fort Peck, Garrison, Oahe, Big Bend, Fort Randall and Gavins Point) on the Missouri River mainstem that are operated for multiple beneficial purposes. The purposes include benefits from the lakes themselves and downstream uses. The operation of the dams for these purposes alters the natural flow of the Missouri River near Saint Joseph.

One of the purposes for the mainstem dams is support of downstream Missouri River navigation. Navigation support requires minimum Missouri River flow rates during the navigation support season. The season typically extends from the beginning of April until the beginning of December each year. Full navigation support at the Kansas City gage (82 miles downstream of Saint Joseph) requires 41,000 cubic feet per second (cfs). Saint Joseph does not have a specific navigation flow requirement.

During non-navigation support season, the mainstem projects support downstream water supply intake structures. Minimum flows for these diversions are maintained to insure that downstream users are able to remove water for municipal and industrial purposes. Generally a minimum flow of 15,000 cfs is required to insure sufficient stage for the user's' intake structures. More water may be required during Missouri River icing conditions.

Navigation target flows provide the authorized, navigable channel depth during the navigation support season. However, the Missouri River Bank Stabilization and Navigation Project (BSNP), as a system, is very dependent on regular, periodic flows above those discharges in order to maintain the self-scouring characteristics of the channel. The Missouri River Operation and Maintenance (O&M) documents note several seasonal and flow events that occur where sustained flows above the navigation targets are needed to re-establish or maintain the channel through higher rates of sediment transport. These include recommendations for up to 10,000 cfs above the navigation targets when the water is available.

Taking water off of the channel at flood stage would probably not impact the channel function, but diverting water just above or even close to navigation flows would likely have a detrimental impact on channel reliability downstream. Further study would be needed to determine a more realistic cutoff somewhere between the navigation target flow and flood flow where "excess" flow would not impact the function of the BSNP.

The River is open to navigation all year long. The navigation support season is eight months, but navigators would use the River whenever they have adequate flows -- even outside the navigation support season. Because of this, taking available flows below the navigation targets even outside of the navigation support season could interfere with navigation of the river. While these issues are important to consider, they are not factored into the current study update which uses the same assumptions as the 1982 Study to determine water availability.

### **2.2.2 Data Requirements**

The Missouri River Basin Water Management (MRBWM) office has determined Missouri River flows that result from the operation of the six lake projects. The flows were developed from hydrologic records that extend from 1898 to 2010. The flows have been adjusted to account for Missouri River dam operation and land use effects based on the 2010 conditions. The flows for the Saint Joseph gage has

been obtained from the MRBWM and used in this study. The data has been updated through 2013 using the U.S. Geological Service data for Missouri River flows at Saint Joseph.

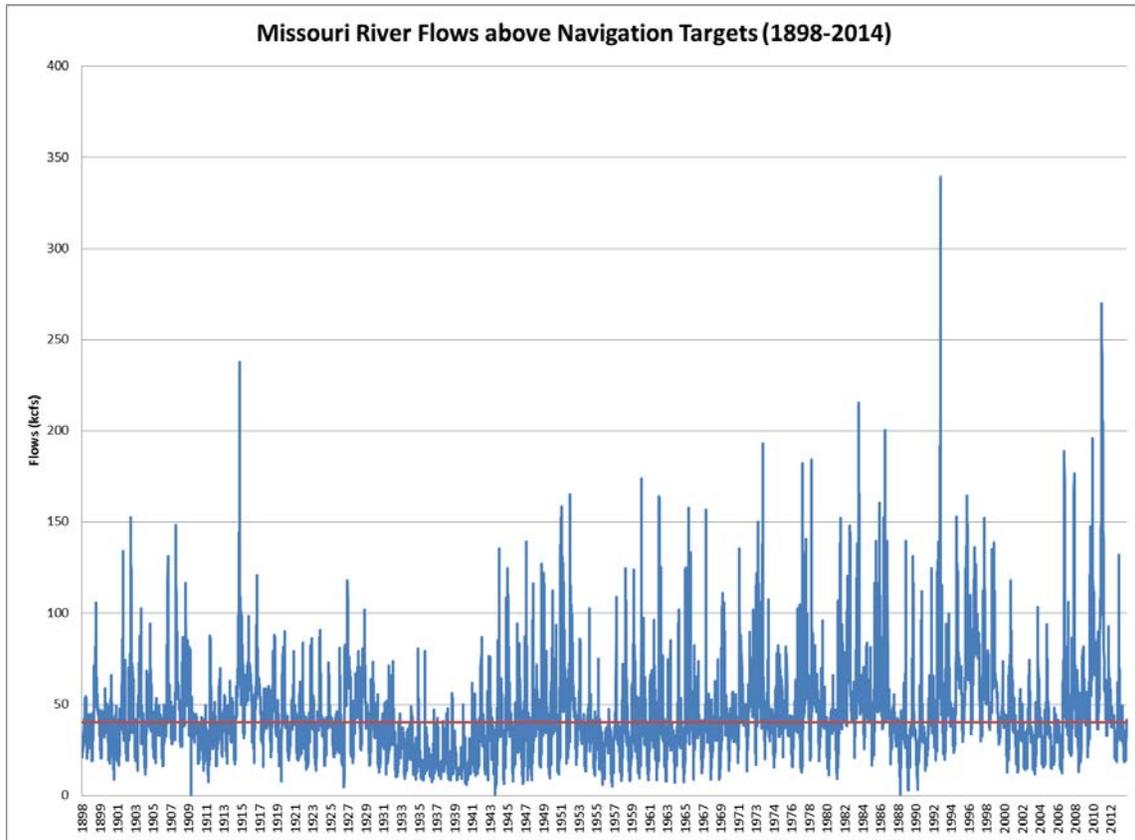


Figure 2.2 (a). Historical Flows.

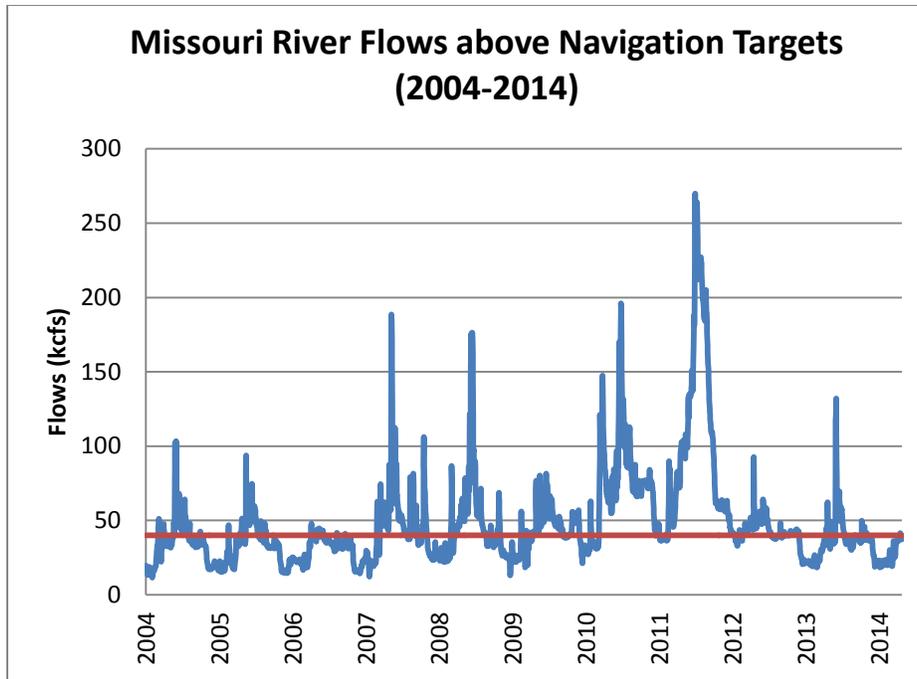


Figure 2.2 (b). Recent Flow History.

## 2.3 Model Development

An Excel model was developed to assist planners with evaluating the effect of different components of a Kansas aqueduct components have to optimize the beneficial use of the available water. The model was developed in an interactive manner to provide user input of different criteria.

### 2.3.1 Model Input

The Missouri River water availability depends on the capacity of: the diversion structure, the source reservoir and the transfer facility. The amount of water available also depends on the amount of water needed to support instream requirement for Saint Joseph and downstream. The user inputs each of these criteria into the model as shown in Table 2.3 (a).

Table 2.3 (a). Model Input- Example.		
Component	Input Values	Units*
Storage Reservoir	700.00	KAF
Transfer Rate	6.83	KCFS
Max Diversion Rate	10.00	KCFS
Start Storage Reservoir	700.00	KAF
Navigation Flow	41.00	KCFS
Winter Flow	15.00	KCFS
* KAF=1000 Acre Feet, KCFS=1000 cubic feet per second		

These input values represent:

- **Storage Reservoir:** The size of offstream storage in thousand acre feet
- **Transfer Rate:** The size of the aqueduct to western Kansas
- **Maximum Diversion Rate:** The capacity of the Missouri River diversion structure
- **Start Storage Reservoir:** The assumed offstream storage at the beginning of the study period
- **Navigation Flow:** Missouri River flow needed during the navigation support season, a minimum of 41,000 cfs
- **Winter Flow:** Missouri River flow needed during the non-navigation support season, a minimum of 15,000 cfs.

Daily values from 1930 to 2013 were input in order to best represent present conditions at Saint Joseph, Missouri. The data prior to 1930 was developed from the available hydrologic record, but sometimes this entailed converting monthly flow data to daily values. The certainty of the daily values cannot be assured and is believed critical for the purposes of this study. Flow criteria were used for navigation and non-navigation support season. The physical properties of the aqueduct system provide the other variables. The runs discussed further represent the variables used in the design of the system.

### 2.3.2 Model Output

After the user has input data as described above, the model calculates the availability of water supply for transfer. The output is the annual supply in thousand second foot day (KSFD) and million acre feet (MAF). The values are provided in Table 2.3 (b) and graph of percentiles at 10% intervals Figure 2.3 (a) as illustrated below. The output below is based on the same assumptions as the 1982 Study. The user can alter these assumptions as desired. The model does not account for lake evaporation at the two reservoirs or account for transmission losses. Full navigation season is assumed every year, April through November.

<b>Percentile (%)*</b>	<b>KSFD**</b>	<b>MAF**</b>
0	140	0.278
10	468	0.928
20	894	1.773
30	1041	2.065
40	1271	2.522
50	1474	2.924
60	1709	3.391
70	2207	4.378
80	2465	4.888
90	2493	4.945
100	2500	4.958

\*1930--2013 Data, Percent of values LESS than criteria  
\*\* KSFD= thousand second foot day, MAF=Million Acre Feet

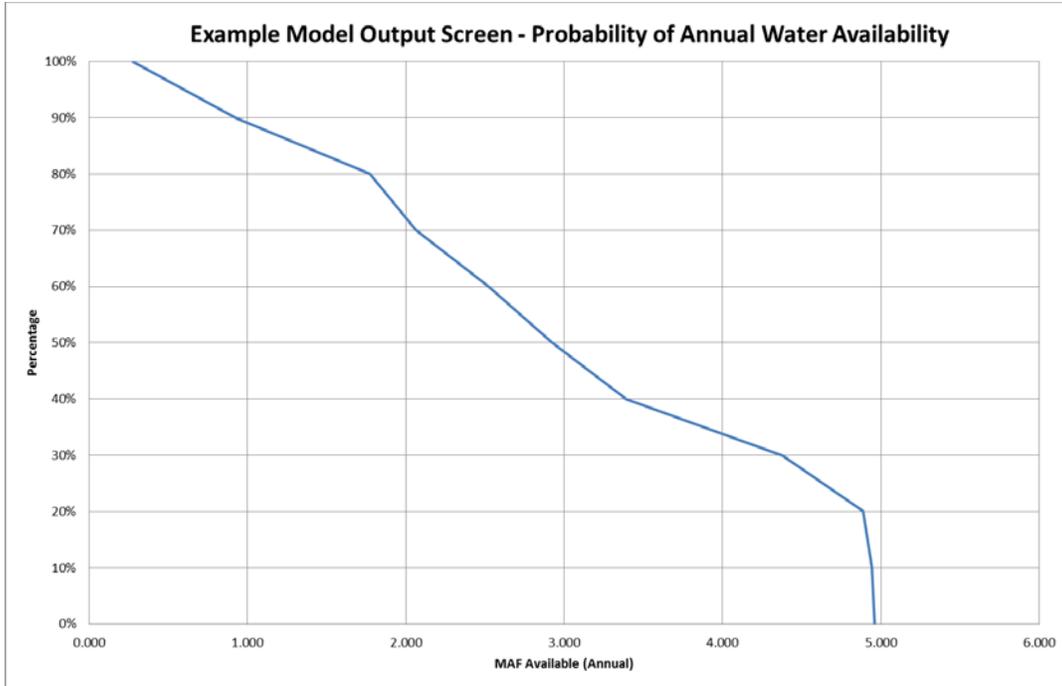


Figure 2.3 (a). Model Output Screen.

The output data is also provided in a bar graph of water available by year, Figure 2.3(b).

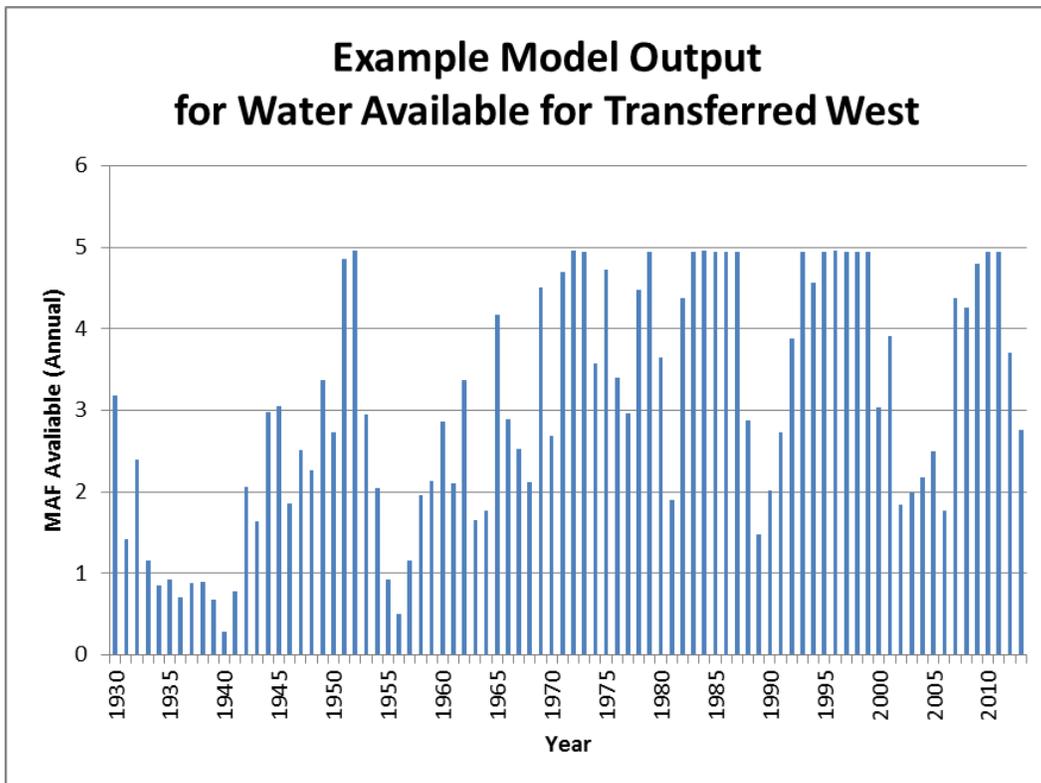


Figure 2.3 (b). Water Available by Year.

## **2.4 Overview of Water Availability**

The model estimates that flows above navigation targets over the period of record using a maximum diversion rate of 30,000 cfs results in an average annual yield of 6.9 MAF. However, this does not account for the limitations of storage capacity and transfer capabilities. Therefore, the model was used to determine the range of water available with different transfer system components. A more detailed discussion of the varying sizes of each of the components and their impacts on yield are discussed in the next chapter. The results show that the average annual yield that can be expected to be available at least fifty percent of the time ranges from 0.9 MAF at the lowest end to 3.2 MAF at the highest end of pumping and storage capacity.

# Update of 1982 Six State High Plains Aquifer Study

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## Chapter 3: Water Transfer System

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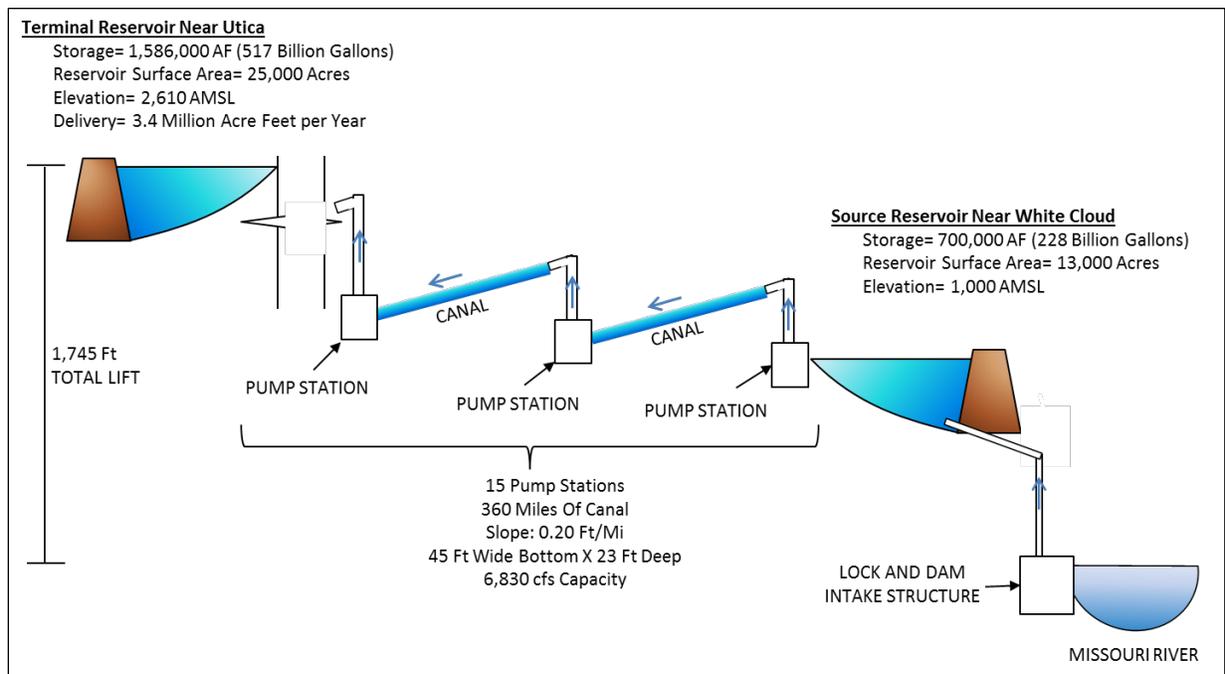
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### 3.1 Water Transfer System Introduction

The water transfer system formulated in the 1982 Study is shown as a schematic in Figure 3.1(a). In general, the system begins at the Missouri River with a diversion structure. Under most scenarios evaluated in the 1982 Study, the diversion structure was anticipated to be a lock and dam across the Missouri River. Alternative diversion structure options in 1982 included the use of radial collector wells or accepting a reduced diversion rate capacity. Flows above navigation and water supply intake structure targets in the Missouri River would be pumped to a “source reservoir”. The source reservoir would be located close to the diversion structure to minimize the cost of the pumping and conveyance facilities from the river to the reservoir. The source reservoir allows a more steady flow in the long-distance canal system, thereby minimizing the cost of this major project component. The canal transfer system would be a concrete-lined canal that would flow westerly approximately 360 miles. Along the route, a series of pump stations would lift the water to the next section of canal. A terminal reservoir, located in western Kansas and overlying the Ogallala aquifer, would store water until needed during the irrigation season, thereby reducing the direct withdrawals from the Ogallala aquifer.



**Figure 3.1 (a). The Kansas Aqueduct system schematic based on the 1982 Study Alternative Route B (south) with 6,830 cubic feet per section (cfs) canal capacity.**

The 1982 Study Alternate B water transfer system components (reservoirs and conveyance systems) are presented in this chapter in light of updated GIS data, water demand forecasts and water availability. Conceptual-level alternatives to the 1982 Study are documented with a brief summary of advantages and disadvantages associated with each alternative. Many of the alternatives presented were brought forward through stakeholder meetings as potential cost savings or yield improvements.

## 3.2 Summary of 1982 Ogallala Water Transfer System Components

### 3.2.1 Missouri River Diversion Structure

Three alternatives for maximum diversion capacities were considered in the 1982 Study; 10,000 cubic feet per second (cfs), 20,000 cfs and 30,000 cfs. These diversion capacities were then used to calculate the amount of water that can be pumped from the Missouri River when the flows were above the minimum flow (flows above navigation and water supply intake structure targets) as discussed in Chapter 2. The 1982 Study utilized Missouri River stream gage data up through 1975. The predicted cumulative upstream Missouri River water diversions were also taken into account and reduced the projected water availability in the future. Table 3.2(a) summarizes the volume of available diversion presented in the 1982 Study compared to the water availability using the diversion tool discussed in Chapter 2.

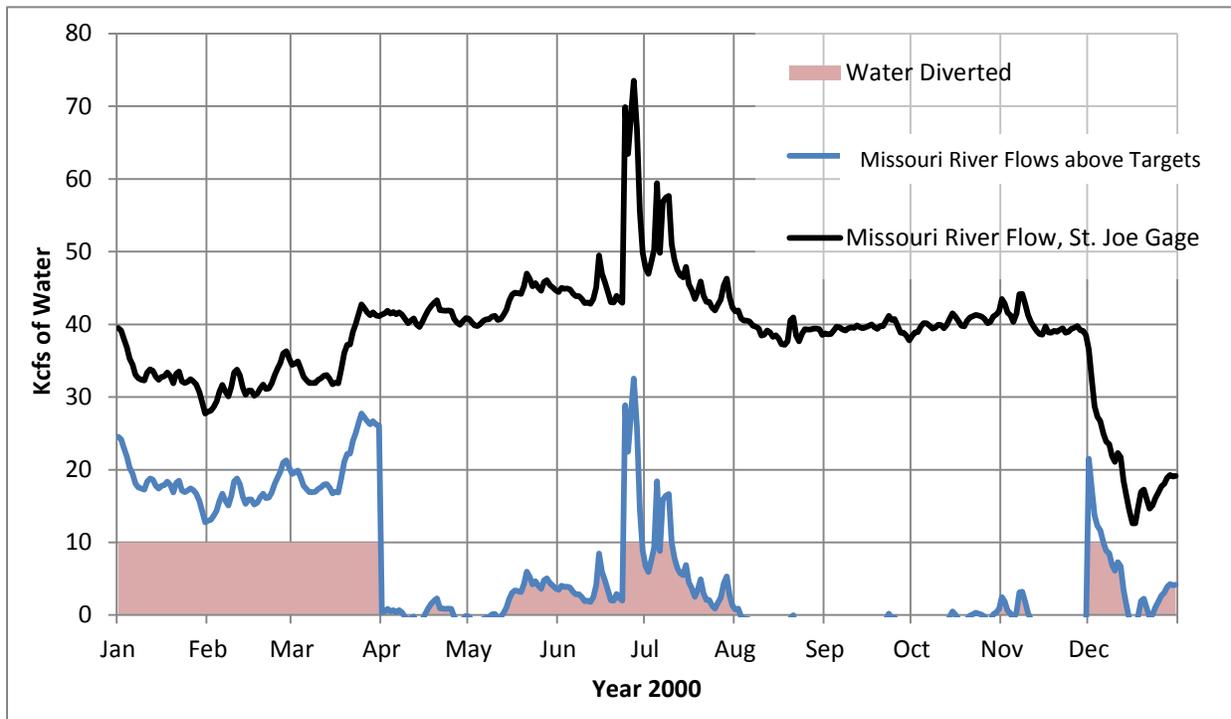
<b>Table 3.2 (a). Comparison of the 1982 Study and Kansas Aqueduct Study annual volume available for diversion from the Missouri River at three maximum diversion capacities.</b>				
<b>Missouri River Peak Diversion Rate in cubic feet per second (cfs)</b>	<b>1982 Study Average Annual Diversion in million acre feet (MAF)</b>			<b>Kansas Aqueduct Study Average Annual Diversion in million acre feet (MAF)</b>
	<b>1975</b>	<b>2000</b>	<b>2020</b>	<b>2013</b>
10,000	2.9	2.1	1.6	3.7
20,000	3.8	2.7	2.1	5.8
30,000	4.1	2.9	2.2	6.9

For 1975, the 1982 Study base year, the average annual available diversion presented in Table 3.2(a) for the updated Kansas Aqueduct Study is approximately 28% to 53% greater than the 1982 estimate. For 2020, the available diversion is nearly three times larger than predicted in 1982. Part of the increase is likely due to nearly forty years of additional stream gage data, and also may be due to an updated Missouri River Mainstem Reservoir System Master Water Control Manual adopted in 2006. The current Master Water Control Manual includes the integrated operation of both Missouri River Mainstem Reservoir System and tributary reservoir water control plans so that an overall plan for flood control and conservation operations exists with the entire Missouri River basin. The updated Master Water Control Manual likely has an impact on both the frequency and duration of water availability, although a detailed analysis has not been performed.

The diversion rates shown in Table 3.2(a) are the maximum pumping rates that could operate while flows above navigation and water supply intake structure targets are available. During flooding events, the flows above navigation and water supply intake structure targets could be large but the peak pumping rate would be reached and additional volume could not be pumped. The duration of the flows above navigation and water supply intake structure targets is also limited so the peak pumping rates could only be sustained during this short duration. As the flows above navigation and water supply intake structure targets diminish, the pumping rates would also be lowered to match the available flow amount. Ultimately, a reduced volume could be pumped before the river would return to minimum navigation stage. The Missouri River average annual flow potentially available for diversion is approximately 8.7 MAF based on the Chapter 2 determination of flows above navigation and water

supply intake structure targets; however, the peak capacity of the pumping system limits the diversions to those shown in Table 3.2(a).

An example is presented to further illustrate the relationship between total Missouri River flows, flows above navigation and water supply intake structure targets potentially available for diversion and the limitations of a peak diversion rate. Figure 3.2 (a) presents Missouri River flows in year 2000 and shows when water would have been available for diversion using a 10,000 cfs peak diversion capacity. This year was selected for illustrative purposes because it has periods of available flows and periods in which diversions would be precluded. Each year in the study period has varying flows and potential diversions. In 2000, a large amount of flow would not have been diverted in the January-April time period because the flows above navigation and water supply intake structure targets would exceed the diversion capacity of a Kansas aqueduct system. In the April-June timeframe, however, all flows above navigation and water supply intake structure targets would have been captured. The August-November time window had minimal flows above navigation and water supply intake structure targets and very little could have been diverted.



**Figure 3.2 (a). Missouri River flows, flows above navigation and water supply intake structure targets and potential diversions in year 2000 for a 10,000 cfs maximum diversion capacity. Flows are expressed as 1,000 cfs (Kcfs).**

Diversion rates above 6,000 cfs would likely require the construction of a lock and dam structure on the Missouri River. The location identified for the lock and dam in the 1982 Study is 35 miles upstream of St. Joseph, Missouri. The lock and dam would raise the water level of the Missouri River such that high withdrawal rates could be accomplished without an excessive drop in the river water surface. A lock is required to allow barge traffic to pass from the lower water elevation up to the higher water elevation on the upstream side of the dam. Similar types of lock and dams are in use along the Mississippi River. Figure 3.2(b) shows Mississippi River Lock and Dam 9 near Lynxville, Wisconsin, which would be similar

to a lock and dam on the Missouri River needed for the higher diversion capacities for a Kansas aqueduct.



**Figure 3.2 (b).** Lock and Dam 9 on the Mississippi River near Lynxville, Wisconsin. A similar structure would likely be required on the Missouri River for diversion rates in excess of 6,000 cfs.

The 1982 Study indicated the lock and dam would impact flood elevations, sediment transport and navigation traffic. Further study and analysis would be necessary to address these impacts. The lock and dam may also require modification of the Master Water Control Manual. In addition, the construction costs are significant and are presented in Chapter 4. For these reasons, the Kansas aqueduct stakeholders expressed a desire to evaluate options that did not involve a lock and dam. One potential option, radial collector wells, is presented in Section 3.4. Other potential options are limited to river intake structures with 6,000 cfs or less capacity. Table 3.2(b) summarizes the average annual diversion capacity for peak diversion rates of 6,000 cfs or less. Diversion rates below 10,000 cfs were not evaluated in the 1982 Study. Lowering the Missouri River peak diversion capacity from 10,000 cfs to 6,000 cfs would result in a reduced diversion of approximately 1.2 MAF annually (from 3.7 MAF to 2.5 MAF per year).

<b>Table 3.2 (b). Potential Missouri River average annual diversion using peak diversion rates that do not require a lock and dam.</b>	
<b>Peak Diversion Capacity from Missouri River (cfs)</b>	<b>Average Annual Diversion (MAF)</b>
2,000	0.9
4,000	1.7
6,000	2.5

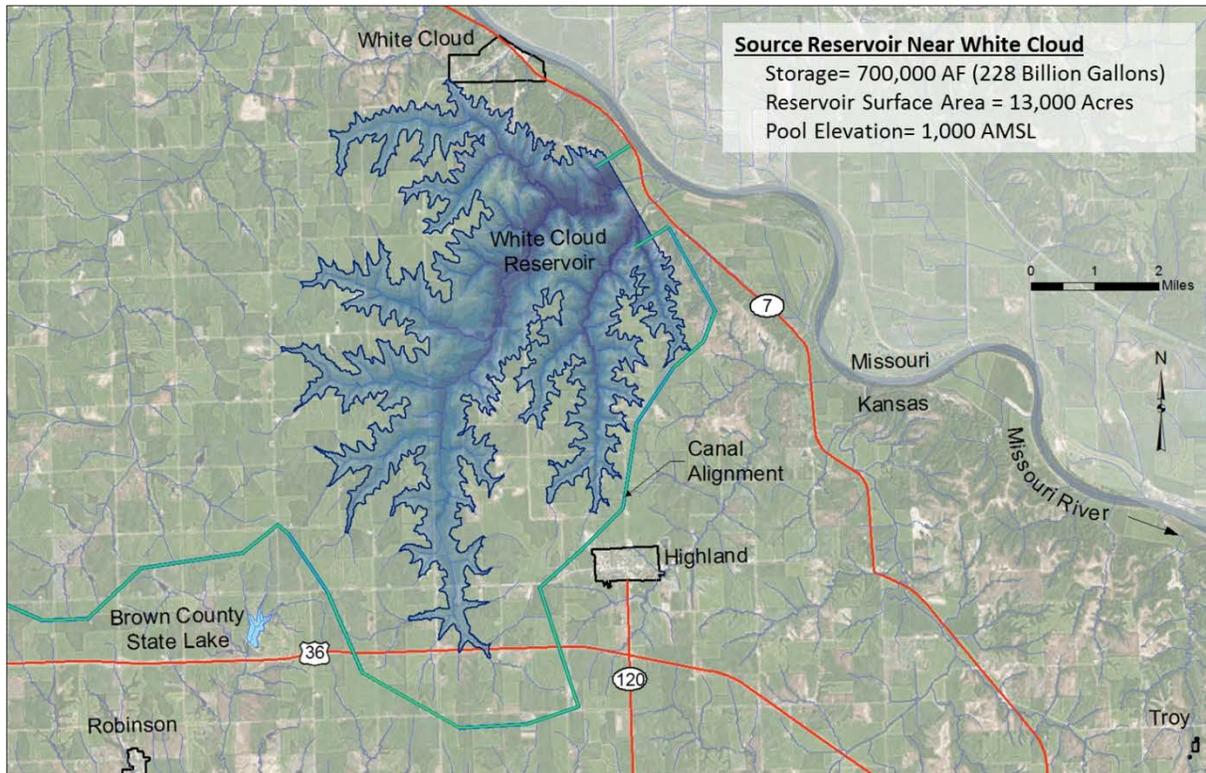
### 3.2.2 Source Reservoir

The 1982 Study called for a new reservoir to be located 2.5 miles southeast of White Cloud, Kansas. The design capacity of the reservoir was 0.7 MAF and would have a reservoir surface area of 13,000 acres when full. The reservoir, buffer, embankment and associated facilities would require 19,000 acres. Figure 3.2(c) shows the location of the reservoir and the pool area. The environmental and cultural resources impacts are discussed in Chapters 6 & 7, the water rights implications in Chapter and the costs are presented in Chapter 4.

The purpose of the source reservoir is three fold:

1. Supply a near uniform flow to the transfer canal,
2. Store excess water during wet periods for subsequent use during droughts and
3. Capture sediment to reduce the canal sedimentation maintenance.

Diversions from the Missouri River would not be available at a uniform rate as discussed in the prior section. The difference between the transfer system capacity and the Missouri River diversion capacity necessitates a storage reservoir. If the transfer canal capacity matched the river diversion capacity, the canal system would operate in surges and would completely stop flowing for extended periods. This discontinuous flow could cause major operations and maintenance problems with the transfer canal concrete lining, frequent pump cycling and would likely impact the longevity of the transfer system. Winter operations would be especially problematic due to the potential for ice jams.



**Figure 3.2 (c). Source reservoir pool area near White Cloud, Kansas (White Cloud Reservoir) based on the 1982 High Plains Study.**

Three Missouri River diversion rates were evaluated in the 1982 Study but only one source reservoir size was presented. Table 3.2 (c) summarizes the amount of flows above navigation and water supply intake structure targets that could be diverted if storage was unlimited and also shows the impacts of a 0.7 MAF storage limitation. For options that include a low Missouri River diversion rate, the source reservoir is periodically under-utilized. During times of flows above navigation and water supply intake structure targets, the low diversion capacities can only capture a limited volume and hence a limited amount of storage is needed. This indicates a smaller reservoir may have nearly the same yield and would be more economically viable for a low diversion rate. Under high diversion capacities, a larger reservoir would be advantageous. With high diversion capacities, the reservoir would quickly fill with no room for additional storage. A larger reservoir would also be advantageous during droughts. The reservoir could help supply water when flows above navigation and water supply intake structure targets are not available in the Missouri River and would result in a more reliable yield to western Kansas. An analysis of drought operations and overall delivery system reliability was not provided in the 1982 Study documents and also not included in this update.

<b>Table 3.2 (c). Comparison of the potential average annual volume that can be diverted from the Missouri River and the amount that can be stored in the source reservoir.</b>		
<b>Peak Diversion Capacity from Missouri River (cfs)</b>	<b>Average Annual Diversion<sup>(1)</sup> (MAF)</b>	<b>Average Annual Diversion with Storage Limit<sup>(2)</sup> (MAF)</b>
2,000	0.9	0.86
4,000	1.7	1.5
6,000	2.5	2.2
10,000	3.7	3.0
20,000	5.8	4.4
30,000	6.9	5.0

<sup>1</sup> Assumes no limitation on canal transfer or storage. Analysis based on Missouri River flow data from 1898-2013 (period of record).

<sup>2</sup> Assumes no limitation on canal transfer capacity, but includes source reservoir storage limit (700,000 AF) and 5% evaporation and seepage loss.

The type of reservoir embankments evaluated in the 1982 Study included concrete, rockfill and earthfill dams. The reservoir site is located on Cedar Creek and Mill Creek. The watershed contributing drainage area is approximately 48 square miles which would provide stormwater runoff and sediment to the reservoir. The watershed yield from Cedar Creek and Mill Creek was not included in the transfer volume and may provide some additional flow if the necessary water rights were to be obtained. Evaporation and seepage loss was estimated at 5% of the volume diverted from the Missouri River and is shown in Table 3.2 (d). The sediment storage in the 1982 Study is based on 28.8 AF per year for 100 years and therefore impacts only 0.4% of the 0.7 MAF active storage volume.

The crest of the emergency spillway, unless a gated spillway is selected, would be located at the top of the conservation pool. Flood surcharge capacity was provided above the conservation pool because the design flood was assumed to pass through the emergency spillway atop a full conservation pool. This resulted in additional dam height and land requirements beyond that needed for the conservation pool. In addition, freeboard was provided above this flood surcharge elevation to provide a factor of safety against the dam being overtopped during passage of the design flood.

The 1982 Study used regression curves to estimate the stormwater runoff volume and no detailed runoff modeling was performed. The estimated flood volume for the Probable Maximum Flood (PMF) is 52,800 AF and 21,120 AF for the Standard Project Flood (SPF). The spillway capacity was based on passing 65% of the peak PMF inflow atop a full conservation pool. The top of dam was based on eight feet of freeboard over either storing 50% of the SPF volume or conveying the SPF peak flow atop the conservation pool. The type and size of the outlet works to convey the flood flows was not provided. The cost for these structures however was estimated based on regression equations related to the available head times the square root of the capacity. The procedures used to estimate required reservoir pool volumes, spillway capacity, outlet capacity and dam crest elevations will need to be reconsidered using current design criteria if more detailed assessments of a Kansas aqueduct project are conducted.

<b>Table 3.2 (d).</b>	
<b>The 1982 Study estimated percentage of annual yield lost to evaporation and seepage.</b>	
<b>System Component</b>	<b>Percent Annual Seepage and Evaporation Loss</b>
Source Reservoir <sup>(1)</sup>	5%
Transfer Canal <sup>(2)</sup>	10%
Terminal Reservoir <sup>(1)</sup>	5%
Distribution System <sup>(3)</sup>	10%
Cumulative System Losses <sup>(4)</sup>	30%
<sup>1</sup> Water loss in the reservoir is calculated as a percentage of the annual diversion volume from the Missouri River. <sup>2</sup> Includes water losses in the canal between the source reservoir and terminal reservoir. <sup>3</sup> Includes water losses in the distribution system between the terminal reservoir and the farm head gate. <sup>4</sup> Project annual water yields are equal to the annual volume diverted from the Missouri River times 0.7 to account for the 30% cumulative seepage and evaporation loss within the system.	

### 3.2.3 Transfer Canal

Water stored in the source reservoir would be pumped into a concrete-lined trapezoidal canal and conveyed westward into the terminal reservoir. The canal route westward followed the ridge line on the southern side of the Kansas River watershed divide. The approximate 1982 Study Alternate B South route is shown in Figure 3.2 (d). The color shading in Figure 3.2 (d) represents the topographic relief across the route. Pump stations are required along the canal route to lift the water approximately 1,745 feet from the source reservoir to the terminal reservoir. The route was chosen to avoid rough terrain and environmentally sensitive areas and to minimize the pumping plants and siphons. This route is the approximate location since the actual route in the 1982 Study was difficult to discern from the map scales provided. The 1982 Study identified the route as being 360 miles long however the route presented in Figure 3.2 (d) is approximately 420 miles long. The difference could be due to the 1982 Study route being straighter and or not strictly following the ridge line as shown Figure 3.2 (d). In future phases, the uncertainty with the canal length and alignment could be reduced by developing a more accurate alignment using GIS based toolsets. For consistency with the 1982 Study, a 360 mile long canal is used for cost estimating in Chapter 4.



**Figure 3.2 (d). The approximate transfer canal alignment and pump station locations from the 1982 Study Alternate B- South Route.**

The 1982 Study evaluated the yield and costs for three canal sizes. The canal capacities and dimensions are presented in Table 3.2(e) and additional canal details and typical sections are presented in Figure 3.2(e). The canal would slope to the west but the topography generally slopes to the east. The canal would need to be excavated into the landscape to accommodate the westward canal slope and pump stations would be needed to lift the water at each location where the excavation depth for the canal becomes excessive. In order to balance earthwork, sections of the canal downstream of the pump stations would be constructed above the existing grade using material excavated from the cut sections of the canal to create the above-grade canal banks.

**Table 3.2 (e).  
Transfer canal sizes presented in the 1982 Study to convey the flows west by gravity.**

Canal Capacity	Slope	Water Top Width	Bottom Width (b <sup>1</sup> )	Water Depth (d <sup>1</sup> )	Water Velocity	Minimum Freeboard (F <sup>1</sup> )	Concrete Liner Freeboard (f <sup>1</sup> )
cfs	%	feet	feet	feet	feet/sec	feet	feet
2,000	0.0125	60	24	12	4	4.0	2.5
6,000	0.0044	126	42	21	3.4	5.0	2.5
10,000	0.0033	158	54	26	3.5	5.3	2.7

<sup>1</sup> Distances in Figure 3.2 (e)

The capacity of the canal (yield) was determined based on an 85% duty cycle assuming the canal and/or pump stations would be inoperable due to weather constraints and planned and unplanned maintenance 15% of the time. Outside of the outages, the canal would flow at a uniform rate to the terminal reservoir. In addition to the 15% down time, losses of water in transit because of evaporation and seepage were assumed to be 10% of the flow as shown in Table 3.2(d) and would further limit the yield. Table 3.2(e) summarizes the required canal sizes to convey the average annual water deliveries stored in the source reservoir as calculated for this study.

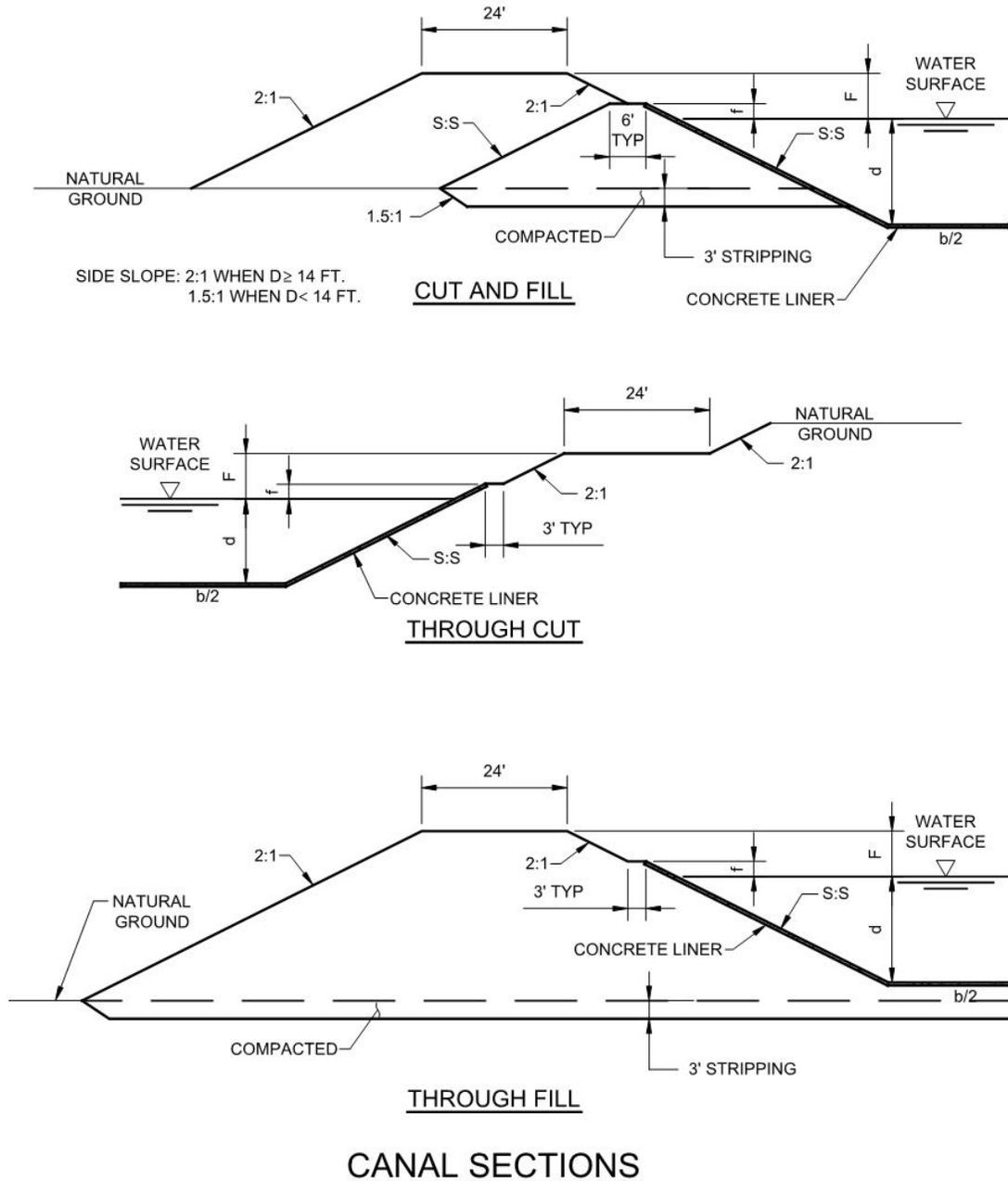
The sizing of the three components of the aqueduct system: diversion capacity, storage volume and canal capacity are all inter-related. For example, Table 3.2(e) shows that a Missouri River peak diversion capacity of 10,000 cfs, with a source reservoir storage volume of 0.7 MAF, would need a 4,800 cfs canal to move the average amount water in storage westward. A smaller canal would not be able to convey the average annual volume in storage. A canal larger than 4,800 cfs would not flow full for the complete year since the volume in storage would be depleted. The larger canal would therefore benefit from a larger storage reservoir and a higher peak diversion capacity. The 1982 Study did not attempt to optimize the three components for each of the alternatives, which is common for high-level planning studies. In future efforts, optimization of the components sizing could result in lower costs per acre-foot and/or higher yields. It should also be noted that these calculations are based on sizing the canal to drain the average annual volume of diverted water stored in the source reservoir. The terminal reservoir could be sized to provide additional drought storage.

<b>Table 3.2 (f). Alternative peak diversion and average canal capacity requirements considering the effects of source reservoir storage.</b>			
<b>Maximum Diversion Capacity from Missouri River (cfs)</b>	<b>Average Annual Water Delivery<sup>(1)</sup> (MAF)</b>	<b>Average Annual Water Delivery Including Storage Limits<sup>(2)</sup> (MAF)</b>	<b>Canal Capacity Required<sup>(3)</sup> (cfs)</b>
2,000	0.9	0.86	1,400
4,000	1.7	1.5	2,400
6,000	2.5	2.2	3,500
10,000	3.7	3.0	4,800
20,000	5.8	4.4	6,900
30,000	6.9	5.0	8,000

<sup>1</sup> Average Annual Water Deliveries are based on the maximum diversion capacities and excess flow availability using the period of record. It does not include storage or canal limits.

<sup>2</sup> The maximum storage of 700,000 AF reduces the average annual water deliveries. Calculations include 5% evaporation and seepage loss from the reservoir as discussed in the 1982 Study.

<sup>3</sup> Canal capacity includes 15% down time for maintenance and weather related impacts.



**Figure 3.2 (e). Typical canal cross sections from the 1982 Study.**

See Table 3.2 (d) for sizes.

The canal would transect a large portion of the state. Relocations of roadways, highways, major pipelines, major power lines and railroads were included in the 1982 project cost elements, but a map of the relocations is not available. The text indicated the planned frequency of canal crossings included Federal Aid Secondary Highway Bridges at a six mile interval on average, but no secondary county road bridge crossings were included in the costs. The costs for the relocations and the new bridges are included in Chapter 4. In the 1982 Study, check gates are planned at approximately four mile intervals. The check gates would allow a section of the canal to be dewatered for maintenance.

### 3.2.4 Canal Pump Stations

The canal route has 1,745 feet of static elevation rise from the source reservoir located near White Cloud, Kansas to the terminal reservoir located near Utica, Kansas. Fifteen pump stations were included in the 1982 Study along the route to lift the water. The approximate lift station locations are presented in Figure 3.2(d). Each lift station would need to have the same capacity as the canal. The pumping plants would utilize up to ten turbine type centrifugal pumps driven by electric motors. The number of pumps may be as few as three units with lower capacity options. The pumps would discharge into concrete pipes for delivery to higher elevations where the water would again flow by gravity to the next pump station. The plants were envisioned to be semi-attended indoor plants and include one pumping unit on operational standby. The operations and communication systems were assumed to be located at a single control point, with controls for pumps and gates and with data feedback and alarm systems.

At the stakeholder meetings, it was discussed that the existing Central Arizona Project (CAP) in many ways is similar to the concept of a Kansas aqueduct project. The CAP is designed to bring about 1.5 MAF of Colorado River water per year to Pima, Pinal and Maricopa counties, Arizona. CAP carries water from Lake Havasu near Parker to the southern boundary of the San Xavier Indian Reservation southwest of Tucson. It is a 336-mile long system of aqueducts, tunnels, pumping plants and pipelines and is the largest single source of renewable water supplies in the State of Arizona. The pumping capacity varies based on location but is generally in the 2,250 to 3,000 cfs range and has a total static lift of 2,900 feet. Figure 3.2(f) is a picture of one of the CAP pumping stations which would have many similar features as a pump station on a Kansas aqueduct project.

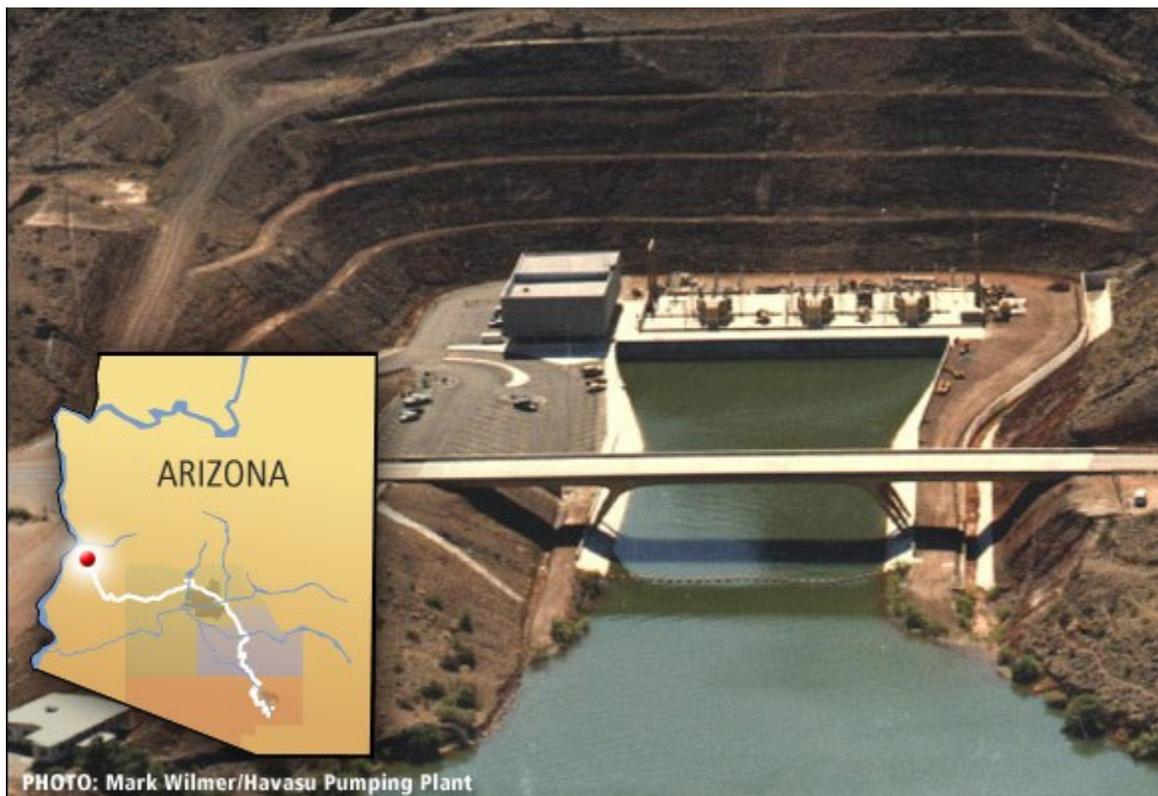


Figure 3.2 (f). Example of a canal pump station from the Central Arizona Project, source [www.cap\\_az.com](http://www.cap_az.com).

The electrically driven pumps would require construction of large electrical transmission lines and would have large electrical power consumption. The electrical transmission lines construction and the electrical operating costs are discussed in Chapter 4. The 1982 Study discussed installation of a hydroelectric generation plant adjacent to the Kansas River to partially offset the electrical consumption and this is discussed in Section 3.2.5. Construction of wind generation turbines and a pumped hydroelectric system was also investigated and is presented in Section 3.4.

### **3.2.5 Kansas River Crossing Siphon and Hydroelectric Generation**

An advantage of siting the canal on the ridge line is it would minimize the number of stream crossing structures. Fewer structures reduce the environmental impacts, construction costs and maintenance. There would, however, be a large siphon required at the Kansas River crossing in Pottawatomie County. The 1982 Study found to cross broad river valleys by canal/drop inlets or pipeline results in significant head losses. There would be approximately 300 feet of drop as the water descends from the ridge line and into a long siphon under the Kansas River. The 1982 Study performed a reconnaissance level analysis of alternative means to cross the valley. The reconnaissance analysis found adding hydropower generation to the system would reduce the net head loss. The power generated while dropping the water down the side of the valley would be used to pump the water up the other side. The hydroelectric plant would be operated at a uniform rate since there is no storage in the canal system. The 1982 Study did not include a detailed benefit-cost analysis of the hydropower plant feasibility.

### **3.2.6 Terminal Reservoir**

The water would be conveyed westward at a near uniform rate, however the demand for the water is not constant. The primary use of the water would be for crop irrigation which peaks in the summer months and is very low in the winter months. The difference when the water is delivered and when it is withdrawn can be used to determine the capacity needed in one or more terminal reservoirs. Table 3.2(f) summarizes the use by month that was utilized in the 1982 Study. The usage shown in Table 3.2(f) is for average weather conditions. A dry spring, for instance, could change when the irrigation water is required over the projected demands shown in Table 3.2(f).

<b>Table 3.2 (g). Average seasonal irrigation water needs for the northern High Plains.</b>	
<b>Month</b>	<b>Percent of Total Demand (%)</b>
January	0.5
February	1.0
March	5.0
April	10.0
May	18.0
June	12.0
July	19.0
August	25.0
September	7.0
October	1.0
November	1.0
December	0.5

The storage volume for the terminal reservoir would be the difference between the steady canal supply and the amount being withdrawn for irrigation. The canal, for instance, would be able to supply the entire demand over the winter months and the excess water that is delivered would be placed into storage. During the peak usage in the summer, the entire canal supply would be needed plus water withdrawn from the terminal reservoir. The 1982 Study did not perform detailed modeling or perform a drought analysis to develop the size of the terminal reservoir required. Instead a factor was used to calculate the peak storage needs as a function of the peak demand from the difference in canal capacity and Table 3.2(f). The 1982 Study determined that to meet a demand of 3.404 MAF at the farm head gate, an annual required terminal storage of 1.586 MAF would be required (0.466 factor). The factor includes 10% evaporation and seepage loss in the distribution system from the terminal storage reservoir to the farm head gate. It also includes a 5% evaporation loss within the terminal storage facility. The distribution system from the terminal reservoir to the farm gate would require additional canals and pump stations, but no details or costs are presented within the 1982 Study.

The proposed terminal reservoir would be an impoundment built on the North Fork Walnut Creek near Utica, Kansas. The terminal storage facility (Utica reservoir) layout as developed in the 1982 Study is presented in Figure 3.2(g) and represents the 1.586 MAF of storage. The contributing drainage area to the terminal reservoir is 431 square miles (mi<sup>2</sup>). This part of the state has limited number of potential reservoir sites due to the flat terrain. The reservoir site is within the Ogallala aquifer and was chosen over a location on the Arkansas River near Dodge City, Kansas and a location near Oberlin, Kansas on Sappa Creek. The PMF and SPF curves discussed previously were used in conjunction with the contributing drainage areas to estimate spillway, sediment storage, surcharge and freeboard elements.

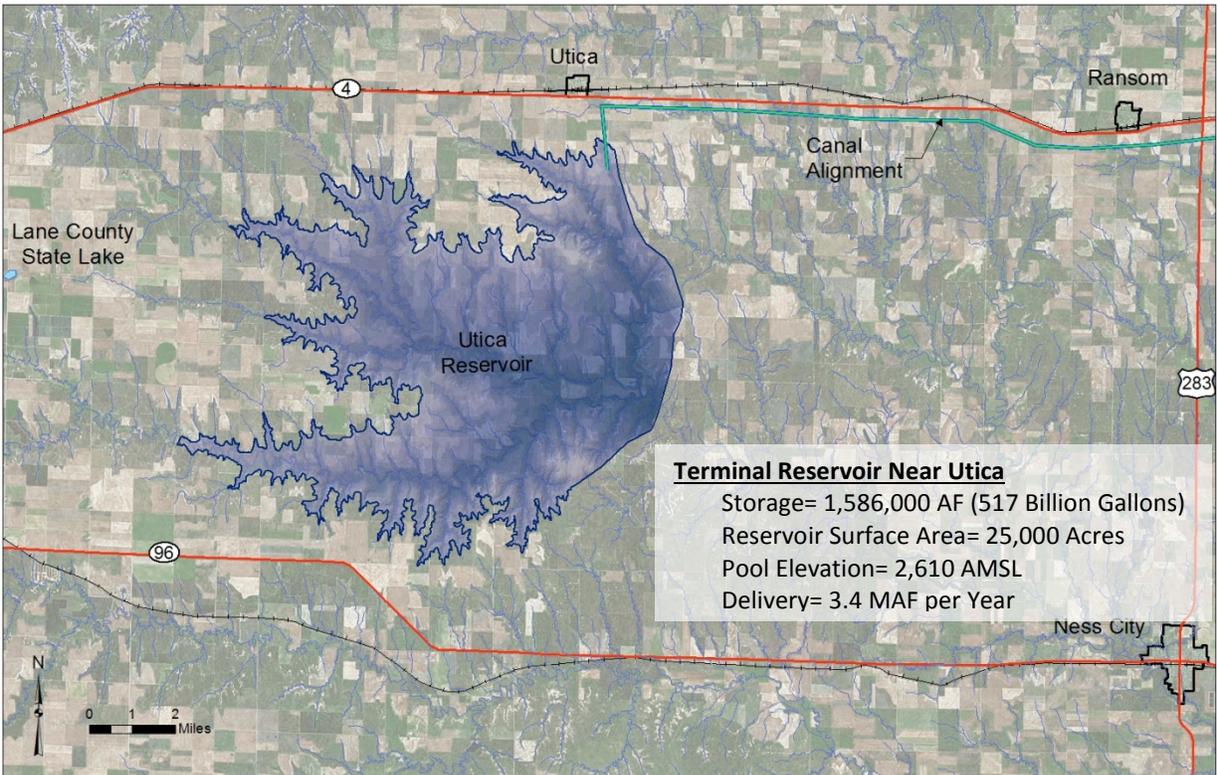


Figure 3.2 (g). Terminal Reservoir area near Utica, Kansas based on the 1982 Study.

### 3.3 Water Transfer Rate Impacts on Water Yield

The 1982 Study did not appear to evaluate component sizing in consideration of the availability of flows above navigation and water supply intake structure targets in the Missouri River nor attempt to optimize project components to reduce the cost per acre foot of water delivered. The 1982 Study determined the cost per acre foot of yield based only on canal sizing. The following section updates the 1982 Study findings by evaluating the yield using availability of flows above navigation and water supply intake structure targets and various system limitations. Table 3.3(a) summarizes the differences in project yield with alternative diversion rates, source reservoir sizes and three alternative canal capacities ranging from 2,000 to 10,000 cfs. Source reservoir capacities range from 0.4 to 1.3 MAF compared to the 0.7 MAF capacity presented in the 1982 Study. Additional optimization of system sizing could be performed in future studies if more detailed cost information is developed and a more detailed site evaluation is performed.

**Table 3.3 (a).**  
**Project yields for 2,000, 6,000 and 10,000 cubic feet per second (cfs) transfer canals with alternative Missouri River maximum diversion and source reservoir capacities in million acre feet (MAF).**

Transfer Canal Capacity <sup>(1)</sup>	Missouri River Diversion <sup>(2)</sup>	Source Reservoir Size	Terminal Reservoir Size	Average Annual Yield to Farm Headgates <sup>(3)</sup>
cfs	cfs	MAF	MAF	MAF
2,000	3,000	0.4	0.43	0.92
2,000	4,000	0.4	0.44	0.94
2,000	4,000	0.5	0.47	1.02
2,000	4,000	0.6	0.47	1.02
2,000	5,000	0.5	0.47	1.02
2,000	5,000	0.6	0.47	1.02
2,000	6,000	0.5	0.47	1.02
2,000	6,000	0.6	0.47	1.02
6,000	6,000	0.1	0.73	1.58
6,000	6,000	0.7	0.73	1.58
6,000	8,000	0.5	0.90	1.94
6,000	8,000	0.7	0.91	1.95
6,000	10,000	0.6	1.00	2.15
6,000	10,000	0.7	1.02	2.19
6,000	10,000	0.8	1.04	2.23
6,000	20,000	0.7	1.11	2.37
10,000	20,000	0.6	1.39	2.98
10,000	20,000	0.7	1.42	3.05
10,000	20,000	0.8	1.46	3.14
10,000	30,000	0.6	1.44	3.08
10,000	30,000	0.7	1.48	3.17
10,000	30,000	0.8	1.50	3.21
10,000	30,000	0.9	1.51	3.23

<sup>1</sup> Includes 15% down time for maintenance and weather impacts.

<sup>2</sup> Calculations based on pumping flows above navigation and water supply intake structure targets and Missouri River flow data from 1898-2013.

<sup>3</sup> Includes 10% seepage and evaporation transmission loss from the source reservoir to the terminal storage, 5% evaporation at the source and terminal reservoir and 10% seepage and evaporation from the terminal storage to the farm headgates.

### 3.3.1 2,000 cfs Transfer System Component Sizing

For a 2,000 cfs capacity transfer canal, Table 3.3(a) summarizes the yield differences with alternative diversion rates and source reservoir capacities. It shows that a source reservoir larger than 500,000 AF and a source diversion rate greater than 4,000 cfs may not increase the average annual water yield due to the limit of a 2,000 cfs transfer canal. As mentioned previously, a larger diversion capacity and source reservoir offer significant benefits during droughts, especially prolonged, multi-year droughts. It is unclear if the 1982 Study developed costs using a source reservoir smaller than 700,000 and the

capacity of the diversion system was not stated. It is anticipated that this option would not require a lock and dam across the Missouri River since the peak diversion rate would be below 6,000 cfs.

### **3.3.2 6,000 cfs Transfer System Component Sizing**

Table 3.3(a) indicates that Missouri River diversion capacities up to 20,000 cfs would continue to increase yield when paired with a 700,000 AF source reservoir and a 6,000 cfs canal. The yield gain however diminishes with diversion capacities greater than 10,000 cfs. The options that use a Missouri River diversion capacity above 6,000 cfs would likely require a lock and dam across the Missouri River. A lock and dam structure would impact flood elevations, sediment transport and navigation traffic. Further study and analysis would be necessary to address these impacts. As mentioned previously, a larger diversion structure and larger reservoir may offer significant benefits during droughts, especially prolonged, multi-year droughts.

### **3.3.3 10,000 cfs Transfer System Component Sizing**

Table 3.3(a) indicates that Missouri River diversion capacities up to 30,000 cfs would continue to increase yields when a 10,000 cfs canal is used. The yield gain begins to diminish when a reservoir capacity greater than 800,000 AF is paired with a 30,000 cfs peak diversion. The largest terminal reservoir size presented in the 1982 Study is based on an annual yield at the farm headgates of 3.4 MAF. To achieve this yield of 30,000 cfs diversion capacity, a 1,300,000 AF source reservoir and a 10,000 cfs transfer canal system would be required. The possibility of developing up to 1.3 MAF of source reservoir storage through one or more reservoirs would need to be evaluated in future studies. All of the options evaluated with a 10,000 cfs canal would require a lock and dam across the Missouri River. As mentioned previously, a large diversion capacity and large reservoir may offer significant benefits especially during prolonged, multi-year droughts.

## **3.4 Alternative Components**

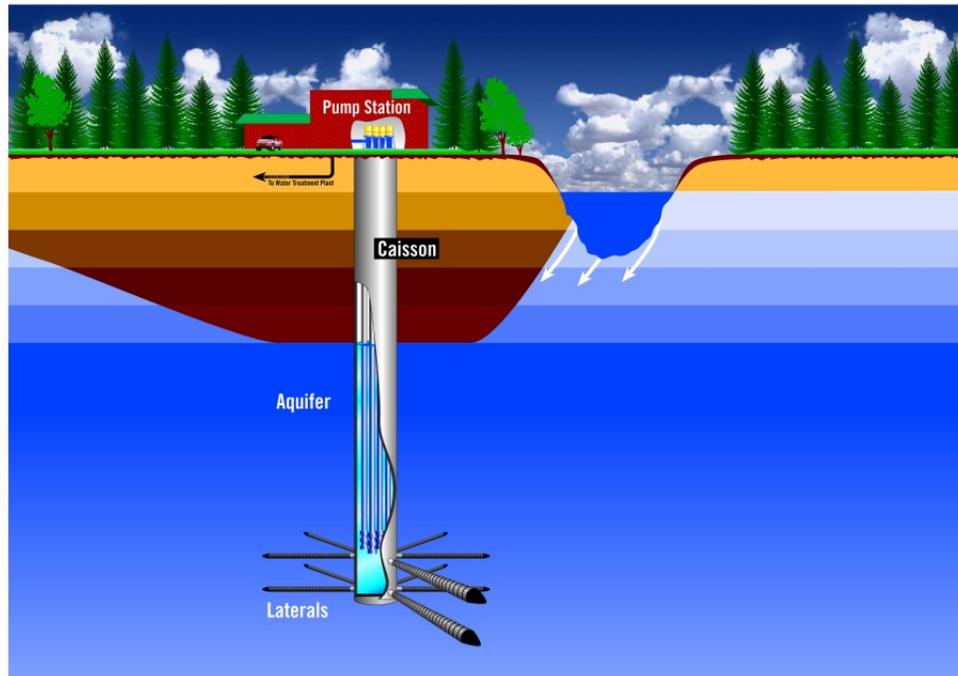
### **3.4.1 Missouri River Horizontal Collector Wells**

In the 1982 Study, the water intake structure on the Missouri River would be a surface water intake. It is envisioned in this study that a lock and dam on the Missouri River would be required for options with diversion capacities in excess of 6,000 cfs. This section presents information related to the feasibility of constructing horizontal collector wells instead of a surface water intake that involves a lock and dam across the river. Horizontal collector wells (HCWs), also referred to as Ranney™ wells and radial collector wells, have been used in raw water diversion systems in the United States for over 70 years. As of 2008, there were approximately 220 active U.S. systems.<sup>1</sup> The following section presents general information about HCWs and also discusses the potential application of HCWs as a raw water diversion system for a Kansas aqueduct project.

#### **3.4.1.1 General Concepts**

HCWs are typically constructed in unconsolidated sand and gravel deposits, and consist of a reinforced concrete-caisson wet well that supplies water to the pump station, with horizontal well screens projected from within the caisson out into the aquifer to divert large quantities of water. HCWs are typically installed adjacent to surface-water sources; rivers primarily. Inducing infiltration from an adjacent river is referred to as riverbank filtration when improvements in water quality are being considered. This infiltration process pre-filters river water as it moves through the riverbed sediments through the sand and gravel deposits and to the well screens. As water levels adjacent to the river are

lowered by pumping, the hydraulic gradients in the alluvial aquifer draw the water from the adjacent river. Hydrogeologic investigations and groundwater modeling studies performed by the manufacturers indicate that, typically, 90 percent or more of the water produced by a HCW is through induced infiltration of the surface water body and 10 percent or less is from depletion of groundwater storage. A cross-sectional view of a typical HCW is shown below in Figure 3.4 (a).



**Figure 3.4 (a). Typical Riverbank Filtration collector well application, Courtesy of Ranney® Collector Wells.**

### 3.4.1.2 Collector Well Construction

The centerpiece of a HCW is the steel reinforced concrete caisson, which typically has an outside diameter that ranges from 10 to 24 feet. The central caisson consists of sections of large-diameter, steel-reinforced concrete pipe that are either prefabricated or are fabricated onsite with water-tight joints. Soil is excavated from within the caisson as it is being advanced downward with hydraulic rams, which causes the caisson to sink downward to the designed depth. The sinking process continues until the lower portion of the caisson reaches the design depth for projection of the lateral well screens. Once the caisson has been placed to its design depth, a reinforced concrete bottom sealing plug is poured to enable the interior of the shaft to be dewatered for screen installation. The caissons can be installed to depths of 150-feet using normal construction methods.<sup>2</sup> In alluvial systems, the bottom of the caisson is generally set near the top of bedrock, which in the Missouri River alluvium typically ranges from 70 to 100 feet below ground surface (bgs). Figure 3.4 (b) shows the typical above grade structures associated with a HCW, which consist of the central caisson and the pump house.



**Figure 3.4 (b). Example Horizontal Collector Surface Facilities - Collector Well No. 2 Olathe, KS (Courtesy of the City of Olathe)**

Specially designed wall-port openings are placed in the walls of the caisson through which the horizontal well screens (also called laterals) are placed. It should be noted that laterals are typically placed several feet above the top of bedrock, but can be placed in more than one plane if the aquifer thickness allows.<sup>3</sup> The laterals are installed just above the top of the bedrock surface in order to maximize the available drawdown in these wells. The laterals are typically constructed of wire-wrapped stainless steel well screen, which is the same material used for traditional water supply well screens.

The laterals are typically installed by hydraulically jacking outward from the vertical shaft. As the laterals are placed, packers are used to control the inflow of water from each lateral until construction is completed. The interior of the caisson must be continually dewatered during the installation of the laterals so that work on the laterals can take place. Currently, the length of the laterals used for water supply is typically 120 to 240 feet.<sup>4</sup>

Once installed, the well screens are developed to remove fine-grained formation materials from around the screens. The development process is performed along the full length of each lateral to ensure that all sections of the well screen get uniformly developed. Re-development of the lateral well screens (i.e., well maintenance) is typically minimal as the laterals are designed so that the velocity of fluid entering the screens remains very low.

### **3.4.1.3 HCW Applications in the Kansas City Area**

A number of communities and industries near Kansas City obtain raw water using HCWs constructed either in the Kansas River or Missouri River alluvium. These include:

- City of Independence, Missouri – One (1) HCW in the Missouri River alluvium.
- City of Olathe, Kansas – Four (4) HCWs, constructed in the Kansas River alluvium.
- Kansas City Kansas Board of Public Utilities (BPU) – Two (2) HCWs in the Missouri River alluvium.
- Kansas City Power and Light (KCP&L) Iatan Station – One (1) HCW in the Missouri River alluvium.
- Tri-County Water Authority (Missouri) – One (1) HCW in the Missouri River alluvium.
- Water District No. 1 of Johnson County, Kansas (Water One) – One (1) HCW in the Missouri River alluvium.

The yield of a HCW is a function of the well design (number and length of laterals), aquifer properties (transmissivity, saturated thickness, etc.) and the recharge from the surface water source. In general, the yield of a HCW increases with increased depth to bedrock, because of increased aquifer transmissivity and available drawdown above the top of the lateral well screens. The caisson of a HCW constructed in the Missouri River alluvium is typically between 70 to 100 feet below ground surface, although deeper depths are possible.

The largest collector well in the world is the BPU Well No. 2, which has been pumped at rates of up to 55 million gallons per day (MGD) (85.1 cfs).<sup>5</sup> The depth to bedrock at these wells in the Kansas River alluvium is 150 feet, which is likely deeper than the Missouri River alluvium in the vicinity of the potential Kansas aqueduct diversion. A more typical range of well yield for HCWs installed in the Missouri River alluvial aquifer near Kansas City is from 10 to 30 MGD (15.5 to 46.4 cfs). This range in well yields can be used for planning purposes to evaluate the feasibility of using HCWs as a raw water source for a Kansas aqueduct.

As with any well, a HCW would eventually require maintenance to restore lost capacity. The frequency and degree of maintenance needed to preserve well capacity varies on well by well basis and is difficult to project. Most of the wells listed above were installed between the mid 1990s to the mid 2000s. Some of these wells have experienced limited declines in performance and have had little to no maintenance work performed. However, some of the wells listed above have experienced declines in performance and have had some well maintenance performed. From the operational history of the wells listed above, it can be estimated that a cleaning and redevelopment of the lateral well screens would be needed once every 10 to 15 years of operation. For budgeting purposes, the cost to clean the well laterals for the City of Olathe HCW No. 2 was \$134,000.<sup>6</sup>

#### **3.4.1.4 Benefits of HCWs**

In addition to providing recharge to the aquifer, riverbank filtration also improves the quality of the water produced by HCWs, which is typically a blend of surface water and groundwater. During the RBF process, objectionable characteristics of the river water, such as turbidity and microorganisms, are removed. Because the induced infiltration occurs over a large area, infiltration rates are extremely low, providing a high degree of filtration in most cases.

As a possible intake system for a Kansas aqueduct project, HCWs have several advantages when compared to surface water intakes or a lock and dam structure, including:

- Significantly less turbidity;
- Filtering of microorganisms;
- A near constant diversion rate;
- HCWs can operate during floods or droughts;
- HCWs are not significantly impacted by streambed degradation;
- HCWs can maintain a near constant water temperature;
- A HCW does not impede river traffic;
- HCW construction does not require modification of the river channel;
- A HCW has less impact on fish and wildlife;
- HCWs are not impacted by frazil ice and
- HCWs intake screens cannot be plugged by zebra mussels.

### 3.4.1.5 Limitations to the Use of HCWs for a Kansas Aqueduct

As previously summarized, for a planning level study, an HCW well yield range of 10 to 30 MGD (15.5 to 46.4 cfs) is appropriate. Using the 7,000 cfs diversion capacity from the 1982 Study, a total of 151 to 452 HCWs would be required to supply that flow rate. Well spacing of 1,000 feet between wells is recommended to minimize interference drawdown between wells. Since these wells must be located in close proximity to the recharge source, 29 to 86 miles of continuous property adjacent to the Missouri River would be required. Other limitations for the use of HCWs as a diversion structure for a Kansas aqueduct include:

- The hydrogeology of the Missouri River alluvium is highly variable and the construction of a high yield HCW is not feasible at all locations.
  - Prior to construction of a radial collector well, it is necessary to drill a number of vertical exploratory borings throughout the area to determine the subsurface hydrologic characteristics.
- The Missouri River can exhibit rapidly changing flow conditions, with a slower response exhibited by groundwater levels. Rapid rises in river flows do not necessarily result in increased groundwater availability, unless the high river flows are sustained. Further study would be required to evaluate the groundwater availability during high flows and sophisticated timing of diversion pumping would be required.
- The timeframe for constructing a HCW is approximately 6 to 9 months.
  - Only two (2) contractors in the United States are known to construct these types of wells, therefore construction time could be an issue.
- HCWs require periodic maintenance of the laterals to maintain higher flow rates.
- Potential for conflict with existing water right permit holders.
- In Kansas, separate water rights are required for surface water and groundwater withdrawals. Kansas requires that modeling to determine the surface water/ groundwater percentage be submitted as part of the HCR appropriation application. The surface water component is typically in excess of 90 percent of the total flow it is likely that HCWs would need to operate within the same excess flow limitations as the lock and dam option.
- Could impact existing bottom land irrigators.

### 3.4.1.6 Horizontal Collector Well Summary

Based on the information and analyses presented herein, following is a list of advantages and disadvantages for using HCWs to supply raw water for a Kansas aqueduct project.

#### 3.4.1.6.1 Advantages

In comparison to a surface water intake and lock and dam system, HCWs offer the following benefits:

- Better water quality with little to no turbidity.
- A near constant diversion rate is possible.
- Stream depletion occurs over a long river reach rather than at a single location.
- Future operation of HCWs should not be significantly impacted by streambed degradation.
- HCW construction does not require modification of the river channel.
- A HCW has less impact on fish and wildlife and therefore may be easier to permit.
- HCWs intake screens cannot be plugged by zebra mussels or frazil ice.

#### **3.4.1.6.2 Disadvantages**

HCWs have the following limitations when compared to surface water intake and lock and dam system:

- Hundreds of wells are needed to supply the design flow.
- HCW river diversions are dependent on rapidly changing river discharges, which do not necessarily result in increased groundwater availability unless the high flows are sustained.
- Extensive subsurface investigation would be required to locate well sites.
- An extremely long reach of property adjacent to the Missouri River would need to be developed with HCWs.
- An extensive network of collection/transmission piping and pump stations would be required to convey the water to the source reservoir.
- Three phase power would be required at all the well sites.
- Only two (2) contractors in the United States are known to construct HCWs and each well requires approximately 6 to 9 months to build.
- Obtaining water rights for hundreds of closely spaced HCWs is uncertain.

#### **3.4.2 Pipeline Conveyance System**

As mentioned previously the proposed open canal would transect a large portion of the state and would have significant easement, right-of-way and/or land acquisition costs. An alternative to using an open canal is a pipeline conveyance system. The required pipe sizes would vary from one, 17-foot diameter pipe for the 2,000 cfs option up to four, 19-foot diameter pipes for the 10,000 cfs option. The manufacture, shipping and construction of such large diameter pipe segments may prove impractical and, if so, more pipes would be required. A pipeline system would have fewer highway and roadway relocation costs. Bridges also would not be needed and the overall alignment could be straighter, thereby reducing the total construction costs and the amount of land rights required. The land above the pipeline system should either be in a permanent easement or be directly purchased. Access roads and electrical transmission mains would still be required. The pipeline system would have additional frictional losses over a canal requiring either larger or more frequent pump stations and would have an increased electrical demand. Although technically feasible, this option is much more expensive than the open canal option. The costs are presented in Chapter 4.

#### **3.4.3 Renewable Energy Generation Corridor**

The idea of a renewable energy corridor was mentioned by the stakeholders and this section discusses the concept of locating renewable wind generation turbines and pumped-storage hydropower along the canal route. The 1982 Study includes one hydroelectric generation plant be constructed on the east side of the Kansas River as water descends off of the ridge line and into the siphon under the river. Potentially, the development of wind generation in the high plains of central and western Kansas, coupled with conventional and pumped-storage hydropower at one or more locations along the alignment of the canal, would help to subsidize the operational costs of the project. While several canal capacities were analyzed in the 1982 Study, for this evaluation, a design capacity necessary to allow for an average design flow of 6,000 cfs has been assumed. The concepts presented were developed at the planning level of detail and additional analysis would be needed to verify the viability.

### 3.4.3.1 Viability of Renewable Energy Facilities along Aqueduct Corridor

The terrain surrounding the route was reviewed to identify possible pumped storage hydropower facility sites. Traditional pumped storage projects cycle water between an upper and lower reservoir using reversible pump-turbines (see Figure 3.4 (c)). Historically, these projects were constructed by utilities to provide supplemental power to complement base-load generation sources such as nuclear and coal-fired generation, utilizing the base generation during off-peak demand hours to pump water into the upper reservoir, and then supplementing the base generation during peak demand hours by moving the water into the lower reservoir and driving the pumps as turbines.

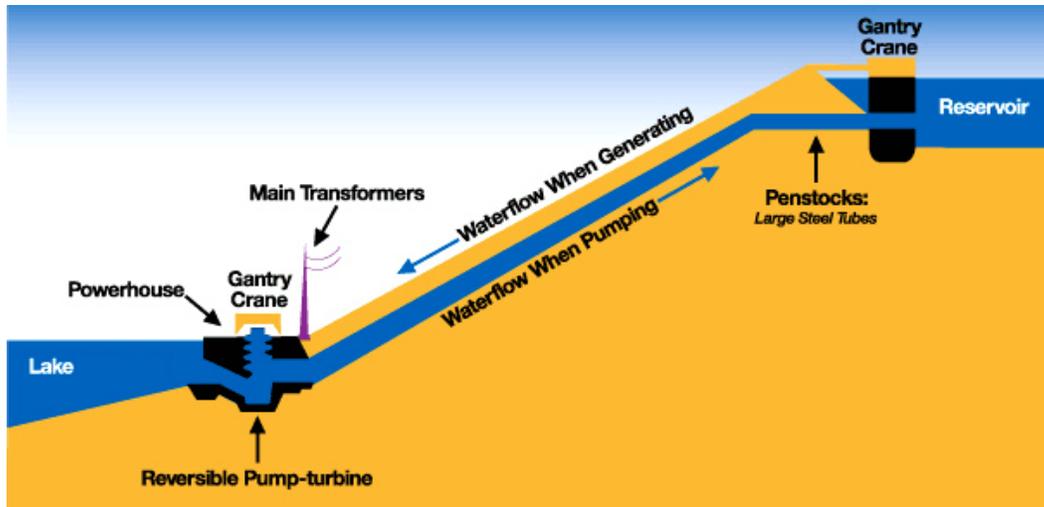


Figure 3.4 (c). Traditional pumped storage hydropower facility, profile view, *Courtesy of Consumers Energy.*

Over the past decade, pumped storage projects have been designed or retrofitted to provide even greater flexibility in generation or pumping response, and are now being utilized for the integration of renewable energy sources such as wind or solar whose generation cannot be scheduled to follow electrical loads. The dispatch of these renewable-energy projects to electrical grids presents difficulties for the utilities. The fast response times offered by pumped storage hydropower are an ideal pairing for these variable, relatively unpredictable generating resources. Conventional hydropower with adequate forebay and afterbay storage can also provide a more flexible resource to pair with variable renewable generation, if designed properly.

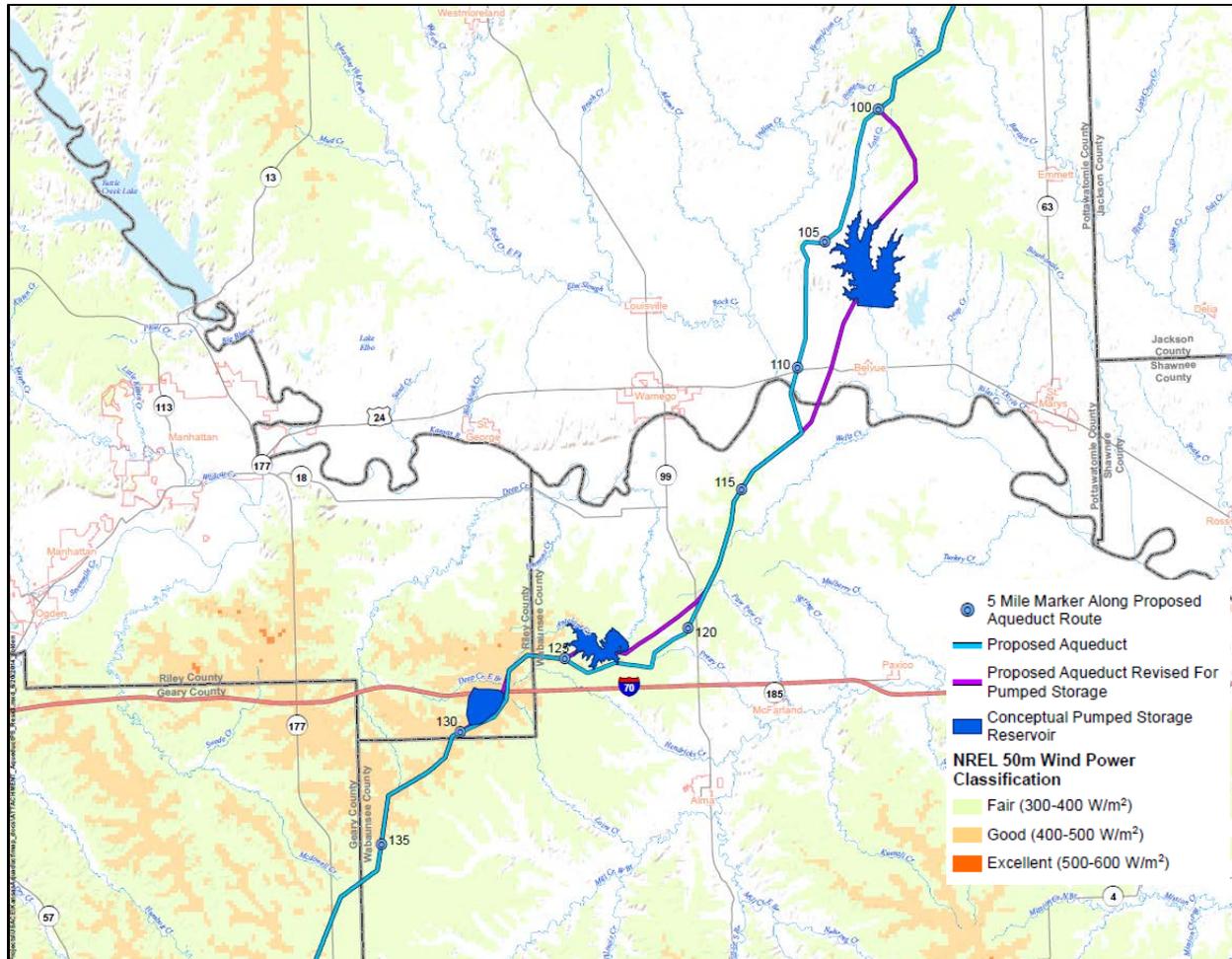
Cost-effective pumped storage locations have a high head differential between the upper and lower reservoirs and a relatively short distance between the two pools, allowing for reduced infrastructure cost associated with tunnels and or high-pressure penstocks. Based upon review of the topography along the entire length of the Kansas aqueduct South Route, it was determined that there is not a suitable site for a traditional, two-pond pumped storage facility. However, a potentially-viable three-reservoir pumped storage alternative was identified in the Kansas River valley, in the vicinity of the location where the 1982 Study envisioned a conventional hydropower facility and the largest consecutive pair of pumping facilities.

In the 1982 Study, the conventional hydropower plant would operate under around 300 feet of head, utilizing the elevation differential from the canal's ridge line alignment into the valley. Two pumping stations, in series, would lift the water approximately 500 feet back to the top of a ridge on the southwestern side of the valley. The hydropower production would partially offset the load

requirements of the pump stations. No reservoir storage was envisioned under this operating scheme; the only ponds that would be necessary would be small “header boxes” where the canal transitions to pipeline. These facilities would limit air entrainment that could adversely affect the turbines and pumps, and also provide proper back pressure to the draft tube of the hydropower turbine in order to prevent cavitation damage. A potential disadvantage of this layout would a possible need to upsize the Kansas River siphon.

### **3.4.3.2 Kansas Aqueduct Pumped Storage**

The pumped storage alternative would add three small reservoirs, and require a slight modification of the route as shown in Figure 3.4 (d). It is assumed for the purposes of this study that the capacity factor for a wind project in this region of Kansas is 0.40, based on data from the National Renewable Energy Laboratory (NREL; see Figure 3.4(e)). The concept involves expanding upon the originally-envisioned hydropower facility by incorporating a modest amount of reservoir storage. The first reservoir forebay, located in the Lost Creek watershed near the City of Belvue, would be sized to have a useable storage of approximately 50,000 acre feet and a maximum pool elevation of roughly 1,050 feet above mean sea level (amsl). This arrangement allows for the production of approximately 95 MW of hydropower (6,000 cfs design flow at 225 feet of net head, with a 90 percent assumed net efficiency), located at the northeastern end of the forebay. The hydropower turbines would have the ability to be fully or individually bypassed for maintenance, allowing continuous operation of a Kansas aqueduct system.

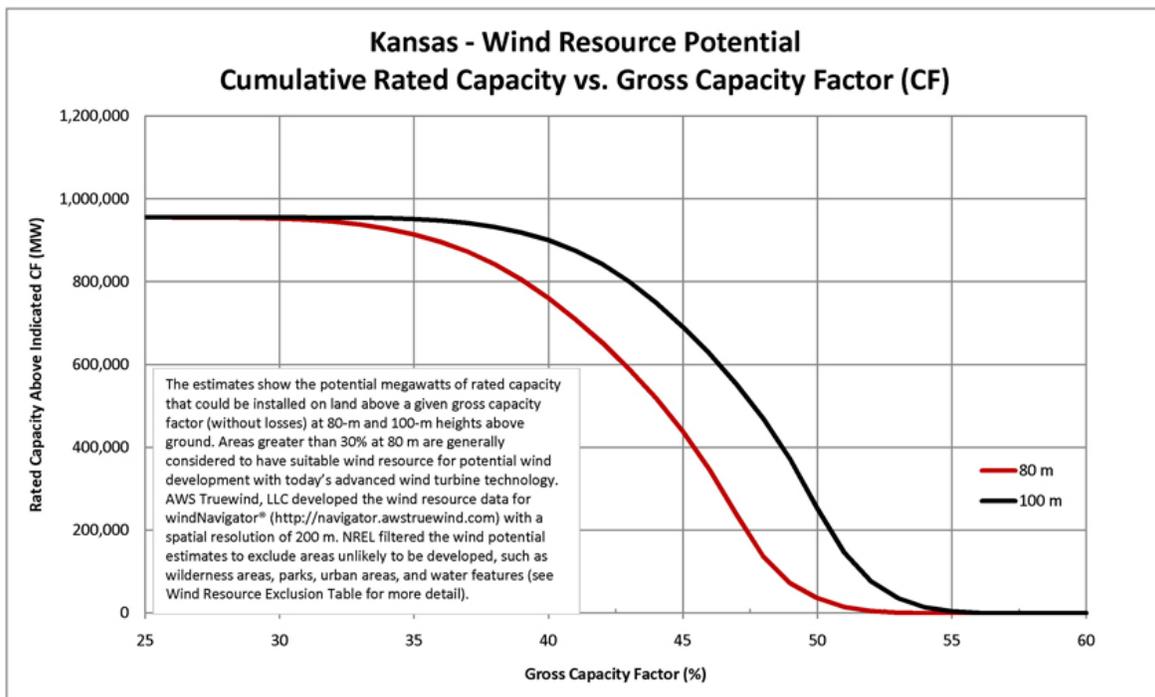


**Figure 3.4 (d). Conceptual location of additional storage reservoirs for use in a pumped hydropower generation facility.**

With a 6,000 cfs near-constant inflow from the upstream canal, the forebay would have a storage capacity of approximately four days (assuming a complete “empty-to-full” cycle). When put into another context, this storage would allow the project to pump in excess of the 6,000 cfs supply for several days, and then have flexibility to pump less than 6,000 cfs for several days, allowing inflows from upstream to refill the forebay. It is this storage flexibility, along with additional downstream storage, that creates the opportunity for pumped storage. The first of two pump stations would pump water from the forebay under the Kansas River to a second reservoir, the interbay, located in the upper Antelope Creek watershed near the City of McFarland with a useable storage of 20,000 acre feet and a maximum water surface elevation of around 1270 feet.

The pump station between the forebay and the interbay would include 2,000 cfs of fixed-speed, continuous pump capacity and 10,000 cfs of adjustable-speed pump capacity. Fixed speed pumps work best under a narrow range of flow and head, with significant drops in efficiency outside of this range. Adjustable-speed pumps provide the ability to maintain a high efficiency through a large range of flow rates and head conditions, but carry considerably higher up-front capital costs. The fixed-speed capacity pumps would be designed to run continuously, which would reduce the amount of water cycling needed to be performed by the reservoirs and provide protection against long durations of low wind generation

availability. The adjustable-speed pumps would be used to provide a balancing resource to a potential wind generation corridor to be developed adjacent to the project (the details of the wind portion of this potential system are described later in this report). If the wind generation projects are developed to directly offset pump loads of the adjustable-speed machines at the project, these pumps can be sized such that they match this capacity factor. Because each pump station needs to be sized for 6,000 cfs on average, this would allow the adjustable-speed pumps to be sized for 10,000 cfs, but to provide 4,000 cfs on average (a 0.40 capacity factor, matching the wind generation profile). When combined with the 2,000 cfs fixed-speed pump flows, a net of 6,000 cfs is achieved. The 20,000 acre-foot storage of the interbay allows for fluctuations in pumping over multiple days; the storage capacities envisioned by this preliminary design allow for either zero wind load or maximum wind load for up to 36 straight hours, with the appropriate starting reservoir conditions.



**Figure 3.4 (e). Capacity Factor (CF) exceedance chart for wind generation resources in Kansas. A 40 percent Capacity Factor was assumed for generation resources based on this curve.**

For the pump station between the forebay and the interbay, the fixed speed pumps are assumed to have a capacity of 45 MW (2,000 cfs at a net pumping head of 250 feet, with an overall efficiency of 90 percent) and the adjustable-speed pumps are assumed to have a capacity of 225 MW (10,000 cfs with the same head and efficiency parameters). A second and final pump station would lift water from the interbay to a third reservoir (afterbay), located at the top of the ridgeline adjacent to Interstate 70 with a useable storage of 20,000 AF and a maximum water surface elevation of approximately 1,500 feet amsl. This pump station would be designed and operated identically to the lower pump station, with a bank of fixed-speed and adjustable-speed units. The reservoirs and pipelines would be sized such that

the capacities of the upper pump station match the lower pump station, in order to achieve efficiencies in manufacturing of equipment and in long term operation and maintenance costs. Water would then be released by gravity from the afterbay back into a Kansas aqueduct near Canal Mile 130, as shown on Figure 3.4 (d).

Reviewing the remainder of the downstream alignment of a Kansas aqueduct, and in particular the proposed pump stations, no other viable locations for pumped storage projects were apparent. A lack of topography for adjacent reservoir storage was the dominant factor in downstream pumped storage opportunities being technically infeasible.

### **3.4.3.3 Utica Hydropower**

As mentioned previously in this report, a conventional hydropower facility, while not mentioned in the 1982 Study, may also be viable at the base of Utica Dam, with an afterbay to provide both adequate tailwater pressure on the turbine and re-regulating storage flexibility for the hydropower plant (Figure 3.4(f)). The feasibility of coupling this Utica hydropower plant with other renewable power generating resources could be considered for meeting electricity demand for industrial, agricultural and residential uses in the Dodge City-Utica vicinity. A Utica Hydropower Plant, coupled with a re-regulating afterbay that provides enough storage to buffer 24 to 48 hours of wind generation variability, could provide a combined wind-hydro output that is predictable based on a preferred “load shape”, as demanded by a single or aggregated set of customers. The hydroelectric generating capacity of the Utica powerhouse would be based on the size of the afterbay storage and the potential up-sizing of the flow capacity through the powerhouse (i.e. the powerhouse could theoretically be designed with a capacity far in excess of 6,000 cfs, thereby enabling it to balance more wind capacity. It would, however, need adequate afterbay storage. Since the reservoir is relatively shallow, the available head would need to be carefully evaluated with respect the pool level changes that would occur through the irrigation season.



**Figure 3.4 (f). Conventional hydropower example from Gavins Point Dam on the Missouri River (source: [www.nwd-mr.usace.army.mil/rcc/reports/pdfs/MissouriRiverFloodingUpdate18-June.pdf](http://www.nwd-mr.usace.army.mil/rcc/reports/pdfs/MissouriRiverFloodingUpdate18-June.pdf)).**

#### **3.4.3.4 Development of Wind Generation Adjacent to Conceptual Hydro Facilities**

As described previously, the hydropower alternatives would work well in conjunction with variable-dispatch renewables, namely wind power. Kansas has extensive existing wind-power generation, with a current installed wind power capacity of nearly 2,700 MW and a projected 7,000 MW to be installed by 2030. Kansas is also one of the nation’s leading wind turbine manufacturing states.<sup>7</sup>

The variable nature of wind generation demands a “firming” resource, so that the net generation profile coming from the aggregated system is more stable and easier to dispatch to meet loads on the power supply grid. These resources are various forms of flexible generation or, more recently, various forms of energy storage. Conventional and pumped storage hydropower is often an ideal candidate to provide the firming capability that variable generation requires.

The wind resources located in the vicinity of the conceptual pumped storage project can be seen in Figure 3.4(d). The ridgeline provides mostly “Good” with a few small areas identified as having “Excellent” wind resources, as rated by the National Renewable Energy Laboratory (NREL), with generating densities at 50-meter turbine height ranging from 400 to 600 W/m<sup>2</sup>.<sup>8</sup> A wind power project co-located with the pumped storage project would reduce the combined project cost by reducing the need for lengthy transmission, additional substations and civil infrastructure. Based on an overall adjustable-speed pump capacity of 450 MW at the conceptual pumped storage project, there would be sufficient area in the region southeast of Manhattan (located generally along and across the Riley-Geary and Riley-Wabaunsee county lines) to construct a wind farm of adequate size to provide this type of capacity. The proximity to Kansas State University (KSU) may also be an opportunity for collaboration; KSU’s Wind Application Center has already developed the Zond Wind Energy Project directly adjacent to

campus in collaboration with the U.S. Department of Energy, which went through a rigorous Environmental Assessment to gain the project approvals and funding.

Wind generating potential in the vicinity of a Utica hydropower project is even more favorable. In this portion of western Kansas, wind resources are rated as generally “Excellent” by NREL, with generating densities at 50-meter turbine height ranging from 500 to 600 W/m<sup>2</sup>. With relatively little land development, several hundred megawatts of wind resources could potentially be firmed and shaped by the Utica powerhouse, depending on the configuration of the afterbay storage and the ultimate size of the powerhouse. These wind resources, in aggregate with the Utica powerhouse, could be used to power both the immediate upstream pump station of a Kansas aqueduct or could be made available to local commercial or agricultural off-takers, as mentioned previously.

It is unlikely that additional sources of distributed wind generation, coupled directly with the other pump stations that make up a Kansas aqueduct project, would be viable without some form of firming resource such as a distributed, off-grid energy storage facility. These facilities (e.g. those with large lithium-ion battery banks) are relatively expensive, generally have a much shorter design life than the other components of the system, and would likely make the off-grid wind development economically infeasible. However, if the wind project could be tied into the regional electrical grid and firmed through other, regional resources, the viability of the project would be enhanced. Given the relatively remote locations of the central and western portions of a Kansas aqueduct, it has been assumed that these are not likely alternatives at this time.

### **3.4.4 Discussion of Other Alternatives**

Several other alternatives were mentioned during stakeholder meetings and have been considered as potential concepts during the completion of this study. The alternatives are generally intended to reduce negative project impacts or lessen expected capital and long-term costs of the project. The following discussion introduces preliminary concepts; however, these alternatives have not been closely evaluated even at a planning level. These alternative concepts have been grouped based on which project component they could affect.

#### **3.4.4.1 Water Demand Alternatives**

##### **3.4.4.1.1 Kansas Municipal and Industrial Users**

The original project purpose was to supply irrigation water to western Kansas with no additional users along the canal alignment. Since the proposed canal alignment follows the ridge line, there are multiple communities along the route that would be down gradient from the canal. Turn-outs could be constructed along the canal alignment to provide water to these communities for public drinking water or industrial water supply. The turn-outs could be aligned with existing streams or new pipelines could be constructed. The municipal and industrial water demand is discussed in Chapter 1. Since these demands are much lower than irrigation demands, a pipeline could be feasible. The water supply could either be the primary supply or could be used to enhance water supply reliability and resiliency.

Municipal and industrial users may also be able to support a higher rate structure than an exclusively agricultural base. This higher rate structure may help with project financing similar to the Central Arizona Project (CAP) regional water supply project in Arizona. The cost structure for the CAP is presented in Chapter 4. It should be noted that the CAP project has a much higher municipal and industrial base and only about 25% of the total supply is used for irrigation. Using the projected 2040 demands presented in Chapter 1, a Kansas aqueduct project would have 1.5% to 4.8% municipal and industrial water supply demand. It is unlikely that this low percentage of municipal and industrial users

would be able to significantly reduce the agricultural unit cost of the water to be supplied as it did for the CAP. The water supply to these communities, however, would be valuable and allow for future growth.

#### **3.4.4.1.2 Project Phasing**

The 1982 Study envisioned construction of the entire project before water distribution would begin. The construction costs and interest charges would accumulate until the entire system was fully built. Project phasing may allow either a smaller system or a shorter system to be initially built and water delivery to begin in shorter time interval. One option would be to provide a canal alignment connecting to Milford and Tuttle Creek reservoirs. Milford and Tuttle Creek reservoirs would be used as the terminal reservoir during this first phase. The canal would supply water for municipal, industrial and irrigation users downstream of the canal alignment and these reservoirs. Communities near and downstream of Manhattan and Topeka could possibly be served. A canal turn-out and transfer system could potentially service the Neosho Basin. A smaller source reservoir and transfer canal system would be needed during this first phase.

Another phasing plan would be constructing the aqueduct westward to supply water to Wichita, irrigation users and nearby communities. Under this phasing plan, the canal transfer system would be smaller west of Milford and Tuttle Creek, since some of the demand would already be satisfied. This “telescoping” type of canal system is common for water supply projects. The upstream sections of the canal are larger and the canal size decreases in the downstream direction as water is diverted to satisfy demands along the route. Since there is not a terminal reservoir near Wichita, the system west of Milford and Tuttle Creek would not flow at a steady rate. The rate would be dependent on the seasonal demand.

Disadvantages to the phasing plan are related to the low initial demand volume. A much smaller system would be difficult to enlarge in future phases. For instance a pipeline system or a narrow canal could be viable during this first phase. Future phases would need a parallel system or complete reconstruction or expansion of the first phase. The irrigation demand increases toward the west. A phasing plan that ends in the eastern portion of the state would not be able to address the majority of the need.

#### **3.4.4.1.3 Extend Canal to Adjacent States**

The unit costs (dollars per acre foot delivered) presented in Chapter 4 are higher than can typically be supported by an agricultural dominated user base. The original 1982 Study anticipated the distribution system would extend into adjacent states. Adjacent states may potentially have significant municipal and industrial demands and be able to subsidize the agricultural use, similar to the pricing structure for the CAP regional water supply project in Arizona. This concept may also be able to leverage additional funding sources outside of the State of Kansas.

The disadvantages are related to lack of adequate supply for a multi-state system and coordination complexity. This raises questions on the amount of supply that would remain in Kansas versus transported to adjacent states. As the system is extended into multiple states, the overall construction costs would grow and coordination complexity would likewise grow.

### **3.4.4.2 Water Supply Alternatives**

#### **3.4.4.2.1 Kansas River Intake**

A Kansas aqueduct would involve construction of a large siphon under the Kansas River east of Tuttle Creek Reservoir. There would be a pump station on the downstream side of the siphon to pump water up the ridge line so the flow can continue west. An intake structure on the Kansas River could be constructed and utilize the proposed pump station on the southwest side of the river. The additional flow volume would be transported and stored in the terminal reservoir thereby increasing the project yield. It is assumed the intake would be operated to skim flows above navigation and water supply intake structure targets when the Kansas River is above minimum stage.

The disadvantages mainly relate to the lack of a reservoir near the Kansas River intake. The flows from the Kansas River would not be constant since it would only be capturing flows at times of excess. The canal system and pump stations are intended to operate at a uniform rate and highly variable flows could cause significant operational concerns. A second concern is the addition of sediment to the canal. Both of these concerns can be mitigated with a new reservoir placed near the Kansas River intake or re-purposing either Milford or Tuttle Creek reservoirs. A new reservoir or re-purposed reservoir could lessen the flow variability and then release water at a uniform rate to the canal system. This reservoir could possibly be combined with a pump back hydropower system discussed in Section 3.4.3.

#### **3.4.4.2.2 Watershed Yield**

The watershed yield from the source reservoir and terminal reservoir was not included in the project yields. If the source reservoir is sited on a large river in the eastern portion of the state, additional flow volumes could be captured and routed into the system. It would be important to locate the source reservoir near the Missouri River to reduce the cost of the system between the Missouri River and the source reservoir. A portion of these flows are likely already being calculated as Missouri River flows above navigation and water supply intake structure targets and hence the increase in yield over the results presented in this study may not be substantially larger. The terminal reservoir has a large contributing drainage area (431 sq mi) but the watershed yield is much lower than the eastern portion of the state. In addition, there could be a large number of water rights downstream of the terminal reservoir that would need to be addressed.

### **3.4.4.3 Minimize Source and/or Terminal Reservoir**

#### **3.4.4.3.1 Distributed Storage**

Another potential alternative involves the construction of multiple smaller reservoirs along the canal alignment instead of a large source or terminal reservoir. The smaller reservoirs on the east end of the state would provide storage to lessen the flow variations from the Missouri River diversion and hence reduce the size of the source reservoir. The canal capacity to these eastern reservoirs would need to be large to handle the entire diversion capacity. The western reservoirs would store the flows above navigation and water supply intake structure targets until needed during the irrigation season and hence reduce the need for a terminal reservoir. The western reservoirs could be located closer to the irrigation demand locations (farm headgates).

Multiple smaller reservoirs offer reliability and operational advantages. For instance, a few reservoirs could be taken out of service without shutting down the entire system. The smaller reservoirs would be easier to site and may be able to better avoid or reduce impacts to sensitive environmental or cultural

resource areas. If recreation is added to these reservoirs, the economic benefit could be distributed across the state rather than just being focused at either end.

This option was not studied in detail but it is anticipated the costs for multiple smaller reservoirs would likely exceed the costs of a large source and terminal reservoir. The canal size in the eastern portion of the state would need to be larger than the 1982 Study plan which would add cost. The canal size on the western end of the state, however, could be smaller since multiple turn-outs would be provided to service users and the canal size would be reduced downstream of each turn-out.

#### **3.4.4.3.2 Canal Sizing to Match Missouri River Diversion Rate**

As mentioned previously, if the canal has a capacity equal to the Missouri River diversion rate, then a source reservoir is not needed for storage. The flow rate in the canal would not be a constant rate but rather would peak and diminish as flows above navigation and water supply intake structure targets become available within the Missouri River. Much of the time, there would be a large amount of unused canal and pump station capacity.

Under this option, it is anticipated that the canal would need to be considerably larger than the 1982 Study plan. The canal capacity could be as large as 30,000 cfs to optimize the project yield. For instance a 6,000 cfs diversion capacity could be paired with a 6,000 cfs canal and no source reservoir. This option would be expected to provide an annual yield of 1.6 MAF compared to 2.4 MAF when a source reservoir is used with a similar canal capacity. It is anticipated the construction costs and maintenance costs would be much higher than the system presented in the 1982 Study.

#### **3.4.4.3.3 Aquifer Recharge System**

Western Kansas primarily irrigates using groundwater and already has the infrastructure in place to utilize groundwater. If the terminal reservoir could be replaced with an aquifer recharge system, then this could eliminate the need to build a canal distribution system from the terminal reservoir to the farm head gates. The aquifer recharge system would receive a uniform flow rate from the canal year-round and the water either injected or infiltrated into the regional groundwater table. The agricultural producers would continue to irrigate with groundwater under this option.

There are several smaller aquifer recharge systems operating in Arizona with a combined recharge capacity of 0.653 MAF annually. The combined recharge capacity, although substantial, is below most of the yields presented in this study. The Tamarack project in Colorado on the South Platte River uses a series of recharge ponds to augment approximately 10,000 acre feet per year but only for shallow return flows back to the river. The construction cost was approximately \$150 to \$300 per AF infiltrated. Applying this cost to the anticipated annual yield of 2 MAF, results in a system cost of \$300 to \$600 million. This cost exceeds the construction cost of the terminal reservoir; however, the costs for the distribution system to the farm head gates were not calculated. The distribution system costs would need to be added to the terminal reservoir cost, whereas the aquifer recharge system would not require a separate distribution system.

#### **3.4.4.3.4 Utilize Existing Reservoirs**

##### *Tuttle Creek and Milford Lake*

Utilization of existing reservoirs was discussed briefly in Section 3.4.4.1.2 Project Phasing, where these existing reservoirs could serve as terminal storage for the first phases of canal construction. Another option would be to incorporate these reservoirs as a means to decrease the source reservoir size. The

disadvantage with either of these options is the lack of existing, dedicated storage volumes to serve this additional function. This is partially due to reservoir sedimentation, but also because the reservoirs were not designed to provide the 0.7 MAF of storage a Kansas aqueduct project could require. It is likely the dam height would need to be increased for either of these reservoirs to offer substantial additional storage.

#### *Lewis and Clark Reservoir (Gavins Point Dam)*

Instead of constructing a new 0.7 MAF source reservoir in Kansas, the existing 0.47 MAF Lewis and Clark Reservoir near Yankton, South Dakota could be considered. Lewis and Clark Reservoir is a Missouri River mainstem reservoir and could have similar water availability as the proposed diversion location near White Cloud, Kansas. Several major rivers within Iowa and Nebraska enter the Missouri River below the diversion, and hence it is anticipated the potential volume of flows above navigation and water supply intake structure targets would be reduced. The amount of flows above navigation and water supply intake structure targets at Lewis and Clark Reservoir has not been evaluated.

A canal system would be built southwesterly across Nebraska with a major river crossing on the Platte River. The canal alignment would not be able to follow a ridge line and multiple river and stream crossings are anticipated. A western alignment might be advantageous if it is the intent to provide irrigation water to western Nebraska along the route to western Kansas. If desired, the route could provide augmentation flows to the South Platte River, North Platte River, the Republican River and the Kansas River before reaching the terminal reservoir location near Utica, Kansas. The route has the potential to benefit multiple states and support the preservation of threatened and endangered species.

### **3.5 Summary of Findings**

The 1982 Study was reviewed to evaluate those project components based on updated Missouri River stream gage data and in light of the current Missouri River Mainstem Reservoir System Master Water Control Manual. A spreadsheet-based modeling tool was developed to evaluate the availability of Missouri River flows above navigation and water supply intake structure targets, and the effects of component sizing on project yield. The analysis indicates that up to 6.9 MAF of excess Missouri River flows (average annual) could be pumped using a 30,000 cfs Missouri River diversion capacity. The average annual yield is nearly 4 times higher than the 1.6 MAF average annual yield determined in the 1982 Study. The increase in yield is due to the additional years of stream gage data, updates to the Missouri River Mainstem Reservoir System Water Control Manual and changes in estimated upstream water diversions that would occur through year 2020. Missouri River diversion rates above 6,000 cfs would require the construction of a new lock and dam on the Missouri River. A 6,000 cfs maximum diversion capacity may avoid construction of a lock and dam but would reduce the potential project yields to 2.5 MAF annually, which still exceeds the yield from the 1982 Study. These yields are before seepage and evaporation losses are included from project components and hence the delivered volume to the farm head gates would be lower.

The pumped water would be stored in a source reservoir and the 1982 Study proposed a reservoir located near White Cloud, Kansas. The purpose of the source reservoir is to reduce flow variability so that a canal can convey water westward at a nearly uniform rate. The proposed size of the source reservoir was 0.7 MAF which would support a yield of 3.0 to 5.0 MAF annually using the Missouri River diversion rates between 10,000 and 30,000 cfs. Yield impacts from alternative reservoir sizes were evaluated with various canal capacities and diversion rates. The project yields are sensitive to the sizing of the diversion capacity and the source reservoir size. A larger source reservoir would be better able to

supply water during extended droughts. The stated yields take into account evaporation and seepage losses from the source reservoir.

A 360 mile long concrete-lined canal and 15 pump stations would be required to transfer the water to western Kansas which is 1,745 feet uphill (net). Canal capacities of 2,000, 6,000 and 10,000 cfs were evaluated for consistency with the 1982 Study. The canal would follow a ridge line generally along the southern watershed divide of the Kansas River. The canal route would transect a large portion of the state and multiple infrastructure relocations would be required. The pumps would be electrically driven and would have a large electrical load. A hydroelectric plant near the Kansas River was proposed in the 1982 Study to partially offset the external electrical usage. A range of yields were evaluated ranging from 1.3 to 4.6 MAF annually which includes source reservoir and canal seepage and evaporation losses.

The irrigation demand is seasonal whereas the canal would flow at a uniform rate. The difference between the canal capacity and peak demand during irrigation season results in a need to construct a terminal reservoir. The proposed terminal reservoir is near Utica, Kansas and would be within the Ogallala aquifer. A range of yields to the farm head gates are calculated ranging from 0.9 to 3.3 MAF annually depending on the component sizing. The stated yields include source reservoir, canal, terminal reservoir and distribution system seepage and evaporation losses.

Several additional alternatives were discussed to various degrees of detail in response to stakeholder input. Some of the alternatives discussed may merit further study. These alternatives are listed in Table 3.5(a) and include options to increase or diversify the water supply users; project phasing; methods to increase yield by using sources in addition to the Missouri River; minimizing the source and terminal reservoir capacities; aquifer recharge and methods to utilize existing reservoirs.

<b>Alternative Concept</b>	<b>Primary Affected Component</b>
Missouri River Horizontal Collector Wells	Missouri River Lock and Dam
Renewable Energy Generation Corridor	Electrical Costs
Kansas Municipal and Industrial Users	User Base
Phase I- Missouri River to Tuttle Creek & Milford Lake	Terminal Reservoir, User Base
Extend Canal to Adjacent States	User Base
Kansas River Intake	Project Yield
Watershed Yield to Source and Terminal Reservoir	Project Yield
Distributed Storage	Source and Terminal Reservoir
Canal Sizing to Match Missouri River Diversion Rate	Eliminate Source Reservoir
Aquifer Recharge System	Eliminate Terminal Reservoir
Re-purpose Tuttle Creek and Milford Lake	Reduce Source and Terminal Reservoir
Re-purpose Lewis and Clark Reservoir	Eliminate a new Source Reservoir

At the conceptual planning level of detail in this study, a system similar to the 1982 Study Route B<sup>9</sup> appears to offer a technically feasible method to transfer water to western Kansas to satisfy a portion of the irrigation demand and potentially some municipal demands. System size optimization and further project definition is needed in order to further evaluate the appropriate sizing and location of the major project elements. Other alternative concepts for water transfer systems have been identified in this study and may merit further development and consideration.

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<sup>1</sup> U.S. Department of the Interior, Bureau of Reclamation. 2008. *Research and Development for Horizontal/Angle Well Technology*. Desalination and Water Purification Research and Development Program Report No. 151. October.

<sup>2</sup> Sterrett, R. J. 2007. *Groundwater and Wells, 3rd Edition*. New Brighton, Minnesota: Johnson Screens.

<sup>3</sup> Hunt, H. C. 2002. *United States experience in installing horizontal collector wells*. In *Riverbank Filtration: Improving Source Water Quality*, C. Ray, G. Melin, and R. Linsky (eds.). Kluwer Academic Publishers, Dordrecht, The Netherlands.

<sup>4</sup> Ibid.

<sup>5</sup> Sterrett, R. J. 2007. *Groundwater and Wells, 3rd Edition*. New Brighton, Minnesota: Johnson Screens.

<sup>6</sup> City of Olathe. 2012. Olathe City Council Regular Session Meeting Notes. October 2.

# Update of 1982 Six State High Plains Aquifer Study

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## Chapter 4: Preliminary Opinion of Probable Costs

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Preliminary opinions of probable capital and operating costs have been developed under Study Task 7 – Cost Estimates. Task 7 is limited to updating the *Six-State High Plains-Ogallala Aquifer Regional Resources Study* (1982 Study); Alternate B South Route projected costs to 2014 base year costs. No new estimates of construction quantities are included in this update of a Kansas aqueduct; nor is the development of new unit costs of construction line items. The projected costs include a breakout of construction-related costs, anticipated annual recurring costs for maintenance and repair of the overall system and energy costs. A resulting cost per acre-foot of water delivered has been calculated using various water availability and delivery factors. The projected costs associated with potential environmental mitigation requirements were not developed in the 1982 Study and are addressed in Chapter 6.

Alternatives to selected components of the 1982 Study Route B water transfer system have been developed along with their respective capital costs. Selected regional water supply systems have been examined for comparison of capital construction costs or delivered water costs per acre foot of water (as appropriate) to those shown for the 1982 Study Alternate B South Route.

An initial risk analysis has been developed to identify areas of potentially significant project risk and the associated effects on project cost uncertainty. Initial risk mitigation strategies are presented as potential measures to reduce projected cost uncertainties in the longer term.

The preliminary opinions of probable costs provided herein are based only on high-level conceptual reviews of available information. The projected costs rely on the 1982 reported cost items and industry-recognized escalation factors and costs indices. The development of detailed construction quantities and associated cost estimating is beyond the scope of this study.

## 4.1 Introduction

The *Six-State High Plains-Ogallala Aquifer Regional Resources Study* (1982 Study) included an examination of a Missouri River water diversion and an aqueduct to western Kansas. Under the 1982 concept, water would be diverted during Missouri River flows occurring over and above the navigation requirement, then be stored and transferred to western Kansas (and/or other western states) and eventually be used to help offset the rate of depletion occurring in the Ogallala aquifer.

The U.S. Army Corps of Engineers (Corps) Kansas City District assisted in the 1982 Study, by preparing the Reconnaissance Study Alternate Route B Water Transfer from the Missouri River to Western Kansas in September, 1982. This Reconnaissance Study was included as *Appendix B to the Six-State High Plains-Ogallala Aquifer Regional Resources Study*. The objectives of this Reconnaissance Study were to:

- Determine the engineering feasibility of water transfer.
- Estimate the costs of constructing, operating and maintaining a water transfer system.
- Identify the general environmental effects associated with the action.

Two potential Route B alignments, a north route and a south route, were evaluated. The Alternate B South Route was found to have one of the lowest investment costs, the least expensive energy costs, the lowest unit cost (dollars per acre feet) for water transfer, and the shortest transfer distance at 360 miles. Water transfer facilities were sized and costs were developed in the 1982 Study; *Appendix B-Reconnaissance Study Alternate Route B Water Transfer from Missouri River to Western Kansas*. This document is used as the source of background descriptions and costs for the Alternate B South Route.

The U.S. Army Corps of Engineers (Corps) Southwestern Division assisted in the 1982 Study, by preparing the *Cost and Design Manual* in August, 1980. This Cost and Design Manual was included as Appendix E to the *Six-State High Plains-Ogallala Aquifer Regional Resources Study*. The purpose of this Cost and

Design Manual was to provide guidance for the Corps in preparing reconnaissance level design, cost estimates and environmental assessments for large water transfer facilities including:

- Laying out water transfer systems.
- Developing estimates of project costs.
- Assessing environmental effects along each alternative transfer route.

This Cost and Design Manual was used to identify the Corps procedures for design and cost estimate development for Alternate B South Route.

The *1982 Study; Appendix B-Reconnaissance Study Alternate Route B Water Transfer from Missouri River to Western Kansas* is a reconnaissance level study, not a detailed design of the facilities. The AACE International (formerly referred to as the Association for the Advancement of Cost Engineering) has developed recommended practices for cost estimating. Recommended practices *No. 17R-97-Cost Estimate Classification System* and *No. 18R-97-Cost Estimate Classification System-As Applied in Engineering, Procurement, and Construction for the Process Industries* present cost estimate classification matrixes based upon the maturity level of the project definition. This matrix provides an expected accuracy range of a cost estimate based upon the maturity level of project definition deliverables along with the typical end usage for the cost estimate. For the purposes of this study, the “concept screening” category appears to be representative of the current project stage. The AACE International recommended practices give the information presented below related to the expected level of accuracy for these types of end usages. This information is presented to suggest potential levels of uncertainty associated with the projected costs provided. Additional factors contributing to uncertainties in the projected costs are presented in other locations below.

<b>Table 4.1 (a). Cost Estimate Expected Accuracy Range for Concept Screening and Feasibility Study.</b>		
<b>End Usage</b> General Purpose of Cost Estimate	<b>Project Maturity Level</b> Expressed as % of Complete Definition	<b>Expected Accuracy Range</b> Typical Variations in Low and High Ranges
Concept Screening	0% to 2%	Low: -20% to -50% High: +30% to +100%
Feasibility Study	1% to 15%	Low: -15% to -30% High: +20% to +50%
Information selected from AACE International Recommended Practice 18R-97		

## **4.2 Alternate Route B Projected Costs**

### **4.2.1 Cost Elements Originating from 1982 Study**

The Cost and Design Manual used by the Corps in the 1982 Study identifies the following major cost elements:

- Lands and Damages.
- Relocations.
- Dams and Reservoirs.
- Pumping Plants and Hydropower.
- Pipelines.
- Canals.
- Siphons.
- Tunnels.
- Automation and Communication.
- Cultural Resources.
- Environmental Mitigation.

A summary description of the approach to projecting costs for the 1982 Study for each of these elements is provided below. The Cost and Design Manual used in the 1982 Study (Appendix E-1982 Study) is included as Appendix 1 of this report.

#### **4.2.1.1 Lands and Damages**

Project land requirements primarily include the canal and reservoirs, although relatively smaller amounts of land would be required for pumping stations, special drainage accommodations and other needs. The unit value used for Kansas was \$1,300 per acre. Figures 7 through 10 (Appendix E-1982 Study) show land costs per mile of canal based on water transfer system design flows.

#### **4.2.1.2 Relocations**

Relocation costs are divided into two general categories: those associated with conveyance facilities, and those associated with a dam and reservoir. Relocation cost elements for conveyance facilities include highways, railroads, major pipelines, major power lines and miscellaneous relocations (including Federal-aid secondary and county roads, electrical distribution lines, rural waterlines and telephone lines).

- Highway relocations include interstate, U.S. and state highways. Figure 11 (Appendix E-1982 Study) shows the highway bridge and approach costs based on water transfer system design flows. These cost curves are based upon site topography conditions requiring assumed amounts of cut and fill for approaches to canal crossings. More severe site topography could increase these costs.
- Railroad bridge and approach costs based on water transfer system design flows are shown in Figure 12 (Appendix E-1982 Study), based upon a single track. These cost curves are based upon site topography conditions requiring assumed amounts of cut and fill for approaches to canal crossings. More severe site topography could increase these costs.

- Pipeline relocations are assigned a \$75,000 relocation cost per pipeline due to site topography not being sufficiently defined at the time of the study.
- Powerlines of 115 kilovolts or greater are assigned an \$80,000 relocation cost per powerline.
- Miscellaneous relocation costs are shown in Figure 13 (Appendix E-1982 Study) using minor relocations costs per mile of canal based on water transfer system design flows. These costs are a composite of the estimated costs of Federal-aid secondary and county roads, electrical distribution, rural waterlines and telephone line relocations.

Relocation cost elements for dams and reservoirs include highways, railroads, transmission pipelines (natural gas, crude oil, oil products), powerlines (transmission and distribution), telephone lines and rural waterlines. Relocation costs are shown in Figure 14 (Appendix E-1982 Study) based upon the cost per mile of relocation for highways, railroads, transmission pipelines, powerlines, telephone lines and rural water lines. These costs assume typical Midwestern relocation (moderate slopes, adequate soil depths, moderate rock excavations, etc.). A contingency factor of 25% is included to account for atypical situations. The relocation costs reflect the following assumptions:

- Highways and railroads are based upon typical site topography conditions. More severe site topography could increase these costs. Costs for major bridges (exceeding 500 feet in length) are not included as none were identified for construction in the *1982 Study*. Land costs are included.
- Pipeline costs include easement, clearing, surveying construction.
- Powerline costs are based upon above-ground installations and include easement, clearing, surveying, drilling and construction.
- Telephone line costs are for underground installation.

#### 4.2.1.3 Dams and Reservoirs

It is assumed that the principal function of the reservoirs is storage of diverted water. Therefore, it is assumed that only sediment and conservation storage would be provided. The crest of the emergency spillway would be located at the top of the conservation pool, unless a gated spillway is provided. Flood surcharge capacity would be above the conservation pool level to allow the design flood to pass the emergency spillway above the conservation pool level resulting in additional dam height and land requirements beyond that needed for the conservation pool.

- Concrete dam structure costs are shown in Figure 15 (Appendix E-1982 Study) based upon the direct cost (\$/CY) versus the volume of the concrete. The cost relationship is based upon the dam structure, spillway, outlet works, other items and contingencies.
- Earthen dam costs are presented separately for embankment, spillway and outlet works.
  - Figures 16 and 16a (Appendix E-1982 Study) show the costs for earthen and rock fill dams based upon the direct cost (\$/CY) versus the embankment volume and is applicable to earthen and rock fill dams.
  - Figure 17 and 17a (Appendix E-1982 Study) show the costs for spillways based upon the head from dam crest to streambed and spillway capacity.
  - Figure 18 and 18a (Appendix E-1982 Study) show the costs for outlet works based upon the head from dam crest to streambed and outlet works' capacity.
- Diversion dam costs with gated and ungated spillways (or weirs) are shown in Figures 19 and 20 (Appendix E-1982 Study) based upon the width and height of the dam.

- Canal headwork's costs are shown in Figure 21 (Appendix E-1982 Study) based upon discharge capacity.

#### **4.2.1.4 Pumping Plants**

Pumping plants would be semi-attended indoor plants equipped with turbine-type centrifugal pumps driven by electric motors. Costs for pumping plants are provided in Figure 22 (Appendix E-1982 Study) based upon pumping plant capacity and head.

#### **4.2.1.5 Pipelines**

Pipelines (discharge conduits) would convey water from the pumping plants to higher elevations. Pipelines are assumed to be precast, prestressed concrete cylinder pipe using a minimum of three feet of soil cover and a maximum diameter of 20 feet. At locations requiring a pipe greater than 20 feet in diameter, multiple pipes are used. Pipeline (pumping plant discharge conduit) costs are shown in Figure 23 (Appendix E-1982 Study) based upon linear feet of pipeline for a given total discharge.

#### **4.2.1.6 Canals**

The canal costs include the concrete used for construction of the lining. The waterway costs include excavation (common and rock), borrow, compacting embankments and trimming the canal for the concrete lining. Major factors impacting canal costs include the amounts of excavation (common and rock), compacted fill, concrete, canal lining, slope of canal and length of canal. Figure 24 (Appendix E-1982 Study) shows canal costs per mile versus flow rate plus a 25% contingency and 10% for miscellaneous items for concrete canals flowing from 500 cfs to 30,000 cfs with different percentages of rock excavation to total excavation. Excavation in rock is considerably more expensive than removal of overburden and soils and can cause a great variation in cost per mile; therefore separate curves are shown for different percentages of rock excavation. Actual costs could vary by about 10% +/- based upon minor items.

#### **4.2.1.7 Siphons**

Costs for siphons are provided in Figure 25 (Appendix E-1982 Study) based upon linear feet of siphon versus discharge. These costs include 25% contingency and 10% for miscellaneous items.

#### **4.2.1.8 Tunnels**

Costs for tunnels are provided in Figure 26 (Appendix E-1982 Study) based upon linear feet of tunnel versus discharge. The maximum practical tunnel diameter is assumed to be 50 feet. These costs include excavation, concrete lining, cement, steel supports, timber lagging, 25% contingency and 10% for miscellaneous items.

#### **4.2.1.9 Automation and Communication**

Automation includes both hardware and software for remote monitoring and control of pumping and other canal works from a centrally located control center. Redundant controls are assumed at pumping plants. Costs are assumed to be similar to those experienced by the California State Water Project (Appendix E-1982 Study).

#### 4.2.1.10 Cultural Resources

Public Law 93-291, "An Act for the Preservation of Historic and Archeological Data", authorized up to 1% of the total amount authorized for a project to be spent on the preservation of cultural resources. Although a limited investigation of cultural resources was performed, the investigation indicated the area is rich in cultural resources. Based upon this and the rapidly rising costs for cultural resources investigations, the entire 1% of authorized project costs is used to estimate costs for the preservation of cultural resources.

#### 4.2.2 Basis of Construction Costs and Projections

The costs for engineering, design and construction supervision and administration (EDSA) are added to the construction costs to arrive at the first costs. The costs of interest during the construction period (based upon the total first costs taken to the anticipated midpoint of construction) are added to the first costs to obtain the investment cost. The 1982 Study considered construction durations of 10, 15 and 20 years to evaluate the impact of interest on total first costs. It was decided during the course of this investigation to focus on a 20-year construction duration and a base year 1979 for escalation of construction costs to 2014. Costs were not developed in the 1982 Study for the distribution canals or water distribution systems required from the terminal reservoir to the use areas. This would be a significant cost that has not been investigated and is beyond the scope of this study.

The costs identified for construction by the 1982 Study include:

- **Lock and Dam.** This includes a Lock and Dam (for Missouri River diversions of 6,000 cubic feet per second (cfs) in capacity and greater) on the Missouri River. It should be noted that this cost was omitted from the 1982 Study for the 6,000 cfs capacity system but is shown in the tables below for the 1979 costs.
- **Source Reservoir.** This includes a 700,000 acre-foot reservoir southeast of White Cloud, Kansas.
- **Pumping Stations and Power Plant.** This includes 16 pumping stations (including one at the Missouri River), each having up to 10 pumping units, to move water upwards along the transfer system. A single hydropower site was included to generate power.
- **Canals.** This includes approximately 360 miles of canals from a source reservoir to a terminal reservoir.
- **Pipelines (conduit).** Siphons are used to cross major streams and some highways and railroads. Pumping stations discharge into prestressed, precast concrete pipe to higher elevations then released into a canal to flow by gravity to the next pump station.
- **Terminal Reservoir.** This includes a reservoir in the vicinity of Utica, Kansas. The size of this reservoir varies according to the yields as discussed in Chapter 3.
- **Route Relocations.** This includes relocations of highways, railroads, major pipelines, major powerlines and miscellaneous relocations (Federal-aid and secondary county roads, electrical distribution, rural waterlines and telephone lines) required for conveyance facilities and those associated with a dam and reservoir.
- **Automation and Communication.** This includes costs for both hardware and software for remote monitoring and control of pumping and other canal works from a centrally located control center.
- **Engineering, design and construction supervision and administration (EDSA).** The costs for engineering, design and construction supervision and administration (EDSA) were assumed to be 11% of the construction cost.

Costs presented in the 1982 Study were expressed as either year 1977 or year 1979 cost base. 1982 Study costs contained herein are expressed in year 1979 cost base and then projected to the year 2014 cost base.

The 1982 Study costs were projected to year 2014 (August) costs using the *Engineering News Record Historical Construction Cost Index (CCI)*. This is a composite index using reference costs from labor, standard structural steel shapes, Portland cement and lumber. It provides an industry reference for estimating construction costs from a base year to another year. It was used to escalate costs from 1979 to 2014 by multiplying year 1979 costs by the ratio of the August, 2014 CCI (9846) to the 1979 CCI (3003). The composite ratio used was 3.27872.

The interest rate used in the 1982 Study was the Fiscal Year 1981 Federal Water Resources Council rate of 7-3/8%. The costs herein reflect the use of the 7-3/8% interest rate for all year 1979 costs. The current Fiscal Year 2014 Federal Water Resources Council rate of 3-1/2% is used for all year 2014 projected costs.

#### 4.2.3 First Costs and Total Investment Costs in 1982 Study

The year 1979 construction cost components, EDSA and interest during construction based upon a 20-year period at 7-3/8% interest rate are given in Table 4.2 (a) for water transfer system capacities of 2,000 cfs, 6,000 cfs and 10,000 cfs.

<b>Table 4.2 (a). Year 1979 Investment Costs for Route B Water Transfer System.</b>			
<b>Item Description</b>	<b>Item Costs for Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Lock & Dam	\$0	\$82,000,000	\$82,000,000
Source Reservoir	90,000,000	90,000,000	90,000,000
Pumping Stations and Power Plant	325,000,000	1,300,000,000	2,489,000,000
Canals	709,000,000	1,191,000,000	1,523,000,000
Pipelines (conduit)	168,000,000	421,000,000	690,000,000
Terminal Reservoir	55,000,000	140,000,000	257,000,000
Route Relocations	107,000,000	114,000,000	120,000,000
Automation & Communication	23,000,000	23,000,000	23,000,000
<b>Subtotal Construction</b>	<b>1,477,000,000</b>	<b>3,361,000,000</b>	<b>5,274,000,000</b>
EDSA (@ 11%)	162,000,000	370,000,000	580,000,000
<b>Total First Costs</b>	<b>1,639,000,000</b>	<b>3,731,000,000</b>	<b>5,854,000,000</b>
Interest During Construction (20 years)	1,862,000,000	4,237,000,000	6,649,000,000
<b>Total Investment Costs</b>	<b>3,501,000,000</b>	<b>7,968,000,000</b>	<b>12,503,000,000</b>

#### 4.2.4 Projected First Costs and Total Investment Costs Adjusted to 2014

The year 2014 projected construction cost components, EDSA and interest during construction based upon a 20-year period at 3-1/2% interest rate are given in Table 4.2 (b) for water transfer system capacities of 2,000 cfs, 6,000 cfs and 10,000 cfs. The FY 2014 general interest rate for water resources planning is 3-3/8%, however, the water supply rate adds another 1/8% interest for a total of 3-1/2%.

<b>Table 4.2 (b).</b>			
<b>Year 2014 Cost Base Projected Investment Costs for Route B Water Transfer System.</b>			
<b>Item Description</b>	<b>Item Costs for Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Lock & Dam	\$0	\$269,000,000	\$269,000,000
Source Reservoir	295,000,000	295,000,000	295,000,000
Pumping Stations and Power Plant	1,066,000,000	4,262,000,000	8,161,000,000
Canals	2,325,000,000	3,905,000,000	4,993,000,000
Pipelines (conduit)	551,000,000	1,380,000,000	2,262,000,000
Terminal Reservoir	180,000,000	459,000,000	843,000,000
Route Relocations	351,000,000	374,000,000	393,000,000
Automation & Communication	75,000,000	75,000,000	75,000,000
<b>Subtotal Construction</b>	<b>4,843,000,000</b>	<b>11,019,000,000</b>	<b>17,291,000,000</b>
EDSA (@ 11%)	533,000,000	1,212,000,000	1,902,000,000
<b>Total First Costs</b>	<b>5,376,000,000</b>	<b>12,231,000,000</b>	<b>19,193,000,000</b>
Interest During Construction (20 years)	2,544,000	5,788,000,000	9,083,000,000
<b>Total Investment Costs</b>	<b>7,919,000</b>	<b>18,019,000,000</b>	<b>28,276,000</b>

#### 4.2.5 Limitations and Precautions

The nature of a reconnaissance report prohibits performing site investigations, obtaining extensive site information or developing detailed design concepts. Generally available site information is used to develop assumptions for site conditions that influence construction operations and costs. Design tasks are limited to providing general information regarding the scope and extent of project facilities to be constructed. Limitations on the information presented herein pertain to assumptions made regarding the nature of the construction work that could be required to construct a project and assumptions made pertaining to projected costs.

Some assumptions discussed in the 1982 Study include:

- Highway relocations cost curves are based upon site topography conditions requiring assumed amounts of cut and fill for approaches to canal crossings. More severe site topography could increase these costs.
- Railroad bridge and approach cost curves are based upon site topography conditions requiring assumed amounts of cut and fill for approaches to canal crossings. More severe site topography could increase these costs.

- Pipeline relocations are assigned a \$75,000 relocation cost per pipeline due to site topography not being sufficiently defined at the time of the study.
- Powerlines of 115 kilovolts or greater are assigned an \$80,000 relocation cost per powerline.
- Miscellaneous relocation costs are a composite of the estimated costs of Federal-aid secondary and county roads, electrical distribution, rural waterlines and telephone line relocations.
- Relocation cost elements for highways, railroads, transmission pipelines (natural gas, crude oil, oil products), powerlines (transmission and distribution), telephone lines and rural waterlines assume typical Midwestern relocation (moderate slopes, adequate soil depths, moderate rock excavations, etc.).
- The major cost elements for canals are the canal and the waterway. The waterway costs include excavation (common and rock), borrow, compacting embankments and trimming the canal for the concrete lining. Major factors impacting canal costs include the amounts of excavation (common and rock), compacted fill, concrete, canal lining, slope of canal and length of canal. Rock excavation to total excavation causes a great variation in cost per mile. Actual costs could vary by about 10% +/- based upon minor items.
- Contingencies were assumed for construction activities, generally this was 25%. This contingency factor may not be adequate to account for cost increases due to project unknowns that are encountered during construction.
- Automation costs are assumed to be similar to those experienced by the California State Water Project.
- Projected costs were not developed in the 1982 Study for the distribution canals or water distribution systems required from the terminal reservoir to the use areas. This would be a significant cost that has not been investigated and is not shown here.

The AACE International recommended practices presented in Table 4.1 (a) provide the expected level of accuracy for these types of end usages.

The limitations discussed above could result in significant changes to project facilities and costs if actual conditions vary significantly.

### 4.3 Alternate Route B Annual Costs

#### 4.3.1 Annual Cost Elements Originating from 1982 Study

The U.S. Army Corps of Engineers (Corps) Southwestern Division prepared the *Cost and Design Manual* that was included as Appendix E to the *Six-State High Plains-Ogallala Aquifer Regional Resources Study*. This Cost and Design Manual provided guidance for the Corps in preparing reconnaissance level design, cost estimates and environmental assessments for the 1982 Study. The *Cost and Design Manual* identifies the following major cost elements for estimating annual costs:

**Interest Rate.** The interest rate used is the interest rate established for each fiscal year by the Water Resources Council.

**Period of Analysis.** This is defined as the period beginning at the end of the construction period over which project benefits and annual costs would accrue.

**Interest During Construction.** This includes the actual interest paid on the expenditures (first costs) to construct a project as presented in Section 4.2.

**Investment Cost.** Investment cost includes the first costs and interest during construction as presented in Section 4.2.

**Interest and Amortization Cost.** The annual cost necessary to pay off project costs at the specified federal interest rate to spread the costs over the project life.

**Operation, Maintenance and Replacement Costs.** The annual costs for materials, equipment, services and facilities to operate a project and make the repairs and replacements necessary to maintain project facilities in good operating condition during the period of analysis.

**Energy Costs.** Electrical power costs to operate project facilities, primarily costs for pumping the water from the pumping stations uphill to the next canal.

The annual costs are then divided by the annual quantity of water delivered to the terminal reservoir to obtain the cost per acre foot (\$/AF) of water for use.

### 4.3.2 Basis of Annual Costs 1982 Study

The following provides details regarding how the annual cost elements were determined.

- **Interest Rate.** The Federal interest rate for the year 1979 costs is 7-3/8%. For the year 2014 costs the interest rate is 3-1/2%.
- **Period of Analysis.** A 100-year period is appropriate for use with the 1982 Study.
- **Interest During Construction.** A period of 20 years is used herein.
- **Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) Costs.**
  - The annual operations and maintenance costs projected for dams and reservoirs is shown in Figure 27 (Appendix E-1982 Study) based upon total volume of controlled storage. Operation and maintenance costs for pumping stations are shown in Figure 28 (Appendix E-1982 Study) based upon pumping plant capacity at various discharge heads and include costs for personnel, materials, supplies and repairs. Operation and maintenance costs for conveyance facilities are shown in Figure 30 (Appendix E-1982 Study) based upon flow and annual costs per mile for two levels (normal and high) of maintenance. These costs include canals, check gate structures, metal bridges and lateral drainage structures. These costs also include replacement of fencing, dirt roads, paved roads, radial gates (< \$100,000), small motors and small computers.
  - Repair, replacement and rehabilitation costs for pumping stations are shown in Figure 29 (Appendix E-1982 Study) based upon an annual rate of \$0.003 per dollar of first cost for pumps and prime movers.
- **Energy Costs.** Electrical power costs for pumping stations are shown in Figure 31 (Appendix E-1982 Study) based upon kilowatt hours per acre-foot for total pumping head. Head loss was assumed to include the actual elevation between the Missouri River and the terminal reservoir, 15 feet of head loss through each pump station and power plant, friction losses in canals and siphons, 18% head loss during power generation (turbines at 82% efficiency). Energy usage assumes pumping efficiency of 82% and includes a 5% contingency. The value obtained from Figure 31 must be multiplied by an appropriate rate per kilowatt hour. Electrical power costs are given as 22.69 mils/kWh (year 1977) in the 1982 Study and are adjusted to 25.33 mils/kWh for year 1979. An electrical power cost of 45 mils/kWh was used for year 2014 costs. Power costs are applied at the rate of 1.333 kWh/acre-foot/foot head based upon Appendix E-1982 Study.

### 4.3.3 Annual Costs 1982 Study

The annual costs for operations and maintenance costs, energy costs and interest and amortization of first costs for the 2,000 cfs, 6,000 cfs and 10,000 cfs water transfer systems are shown in Tables 4.3 (a), 4.3 (b) and 4.3 (c) respectively for year 1979 costs. All costs are based upon a 20-year construction period and a 100-year project first costs amortization.

<b>Table 4.3 (a).</b>			
<b>Year 1979 Annual OMRR&amp;R Costs for Route B Water Transfer System.</b>			
<b>OMRR&amp;R Facility</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Canal OMRR&R	\$3,115,000	\$3,221,000	\$3,322,000
Pipelines (conduits) OMRR&R	\$148,000	\$151,000	\$156,000
Plant O&M	\$2,582,000	\$3,945,000	\$5,245,000
Plant RR&R	\$1,348,000	\$2,059,000	\$2,739,000
Automation & Communications	\$48,000	\$48,000	\$48,000
Source Reservoir	\$510,000	\$510,000	\$510,000
Terminal Reservoir	\$370,00	\$700,000	\$930,000
Lock & Dam	0	\$700,000	\$700,000
<b>Totals</b>	<b>\$8,121,000</b>	<b>\$11,334,000</b>	<b>\$13,650,000</b>

<b>Table 4.3 (b).</b>			
<b>Year 1979 Annual Energy Costs for Route B Water Transfer System.</b>			
<b>Cost Factors</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Supplied Acre feet/Year	\$1,000,000	\$2,400,000	\$3,200,000
Multiplier for Acre feet in System	1.235	1.235	1.235
System Equivalent Head (Feet)	2,377	2,223	2,204
kWh/Acre feet Head	1.333	1.333	1.333
Energy Costs (\$/kWh)	0.02533	0.02533	0.02533
<b>Total Annual Energy Costs</b>	<b>\$99,000,000</b>	<b>\$222,000,000</b>	<b>\$294,000,000</b>

<b>Table 4.3 (c).</b>			
<b>Year 1979 Interest &amp; Amortization Costs for Route B Water Transfer System.</b>			
<b>Interest &amp; Amortization Costs for Year 1979</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Interest & Amortization Costs	\$258,000,000	\$588,000,000	\$923,000,000

#### 4.3.4 Projected Annual Costs Adjusted to 2014

The projected annual costs for operations and maintenance costs, energy costs and interest and amortization of first costs for the 2,000 cfs, 6,000 cfs and 10,000 cfs water transfer systems are shown in Tables 4.3 (d), 4.3 (e) and 4.3 (f) respectively for year 2014 costs. All costs are based upon a 20-year construction period and a 100-year project first costs amortization. OMRR&R costs were adjusted from year 1979 to year 2014 using the *ENR Historical Construction Cost Index* of 3.27872.

<b>Table 4.3 (d).</b>			
<b>Year 2014 Projected Annual OMRR&amp;R Costs for Route B Water Transfer System.</b>			
<b>OMRR&amp;R Facility</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Canal OMRR&R	\$10,213,000	\$10,561,000	\$10,892,000
Pipelines (conduits) OMRR&R	\$485,000	\$495,000	\$511,000
Plant O&M	\$8,466,000	\$12,935,000	\$17,197,000
Plant RR&R	\$4,420,000	\$6,751,000	\$8,980,000
Automation & Communications	\$157,000	\$157,000	\$157,000
Source Reservoir	\$1,672,000	\$1,672,000	\$1,672,000
Terminal Reservoir	\$1,213,000	\$2,295,000	\$3,049,000
Lock & Dam	0	\$2,295,000	\$2,295,000
<b>Totals</b>	<b>\$26,626,000</b>	<b>\$37,161,000</b>	<b>\$44,753,000</b>

<b>Table 4.3 (e).</b>			
<b>Year 2014 Projected Annual Energy Costs for Route B Water Transfer System.</b>			
<b>Cost Factors</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Supplied Acre feet/Year	\$1,000,000	\$2,400,000	\$3,200,000
Multiplier for Acre feet in System	1.235	1.235	1.235
System Equivalent Head (Feet)	2,377	2,223	2,204
kWh/Acre feet Head	1.333	1.333	1.333
Energy Costs (\$/kWh)	0.04500	0.04500	0.04500
<b>Total Annual Energy Costs</b>	<b>176,000,000</b>	<b>395,000,000</b>	<b>522,000,000</b>

<b>Table 4.3 (f).</b>			
<b>Year 2014 Projected Interest &amp; Amortization Costs for Route B Water Transfer System.</b>			
<b>Interest &amp; Amortization Costs For Year 1979</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
Interest & Amortization Costs	\$287,000,000	\$652,000,000	\$1,024,000,000

### 4.3.5 Limitations and Precautions

The limitations and precautions related to the annual costs are associated with the assumptions used in developing the operation, maintenance, repair, replacement and rehabilitation costs; electrical power costs and interest and amortization costs. Operations, maintenance and replacement costs were projected based upon data from other existing systems. If a Kansas aqueduct performs differently than these comparison systems there could be significant variations from the projected costs. Electrical power costs are developed based upon a number of assumptions relating to system head, the kWh requirements per acre feet of water pumped and energy costs. No detailed energy or electrical studies were performed within the scope of this study.

## 4.4 Alternate Route B Delivered Water Costs

The costs per acre-foot of water delivered to the terminal reservoir were found by adding all of the annualized costs (operations, maintenance, repair, replacement and rehabilitation; energy costs and interest and amortization of first costs) then dividing this total annual cost by the annual acre feet of water delivered.

### 4.4.1 Delivered Water Costs 1982 Study

Delivered water costs for year 1979 are provided in Table 4.4 (a).

<b>Table 4.4 (a). Year 1979 Delivered Water Costs (\$/AF) for Route B Water Transfer System.</b>			
<b>Annual Cost Items</b>	<b>Water Transfer System Size</b>		
	<b>2,000 cfs</b>	<b>6,000 cfs</b>	<b>10,000 cfs</b>
OMRR&R	\$8,121,000	\$11,334,000	\$13,650,000
Energy Costs	\$99,000,000	\$222,000,000	\$294,000,000
Interest & Amortization	\$258,000,000	\$588,000,000	\$923,000,000
<b>Total Annual Costs</b>	<b>\$365,121,000</b>	<b>\$821,334,000</b>	<b>\$1,230,650,000</b>
Annual Acre feet Delivered	1,000,000	2,400,000	3,200,000
<b>Total Delivered Water Costs (\$/AF)</b>	<b>\$365</b>	<b>\$342</b>	<b>\$385</b>

### 4.4.2 Projected Delivered Water Costs Adjusted to 2014

Projected delivered water costs for year 2014 are provided in Table 4.4 (b).

Annual Cost Items	Water Transfer System Size		
	2,000 cfs	6,000 cfs	10,000 cfs
OMRR&R	\$26,626,000	\$37,161,000	\$44,753,000
Energy Costs	\$176,000,000	\$395,000,000	\$522,000,000
Interest & Amortization	\$287,000,000	\$652,000,000	\$1,024,000,000
<b>Total Annual Costs</b>	<b>\$489,626,000</b>	<b>\$1,084,161,000</b>	<b>\$1,590,753,000</b>
Annual Acre feet Delivered	1,000,000	2,400,000	3,200,000
<b>Total Delivered Water Costs (\$/AF)</b>	<b>\$490</b>	<b>\$452</b>	<b>\$497</b>

#### 4.4.3 Limitations and Precautions

Limitations and precautions for using the delivered water costs reflect all previously stated limitations and precautions resulting from the development of the first costs, investment costs and annual costs. Additionally, the cost per acre feet assumes that the water transfer system is able to operate satisfactorily to deliver the projected quantities of water. Significant interruptions to water delivery would result in increases to the actual delivered water costs by decreasing the annual delivered water quantity. Further, all costs presented herein are considered preliminary and subject to change. For the purposes of this study update, the cost information should be viewed as a range of costs as discussed in 4.7 Summary of Findings.

#### 4.5 Examination of Route B Alternatives and Selected Regional Water Supply Projects

In addition to revisiting and escalating the costs of the 1982 Study, other investigations were performed to evaluate the concepts and costs of the original study. These investigations included:

- Evaluation and investigation of construction costs for alternatives to selected elements of the 1982 Study for Route B.
- Comparison of construction costs of elements of other regional water systems to those provided in the 1982 Study.
- Comparison of delivered water costs of other regional water systems to those provided in the 1982 Study.

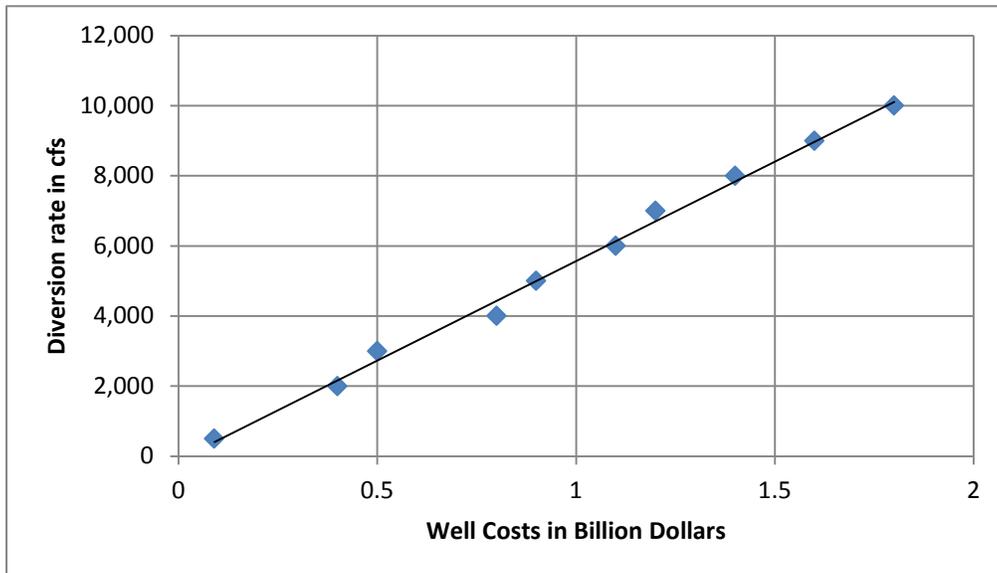
##### 4.5.1 Route B Alternatives Projected Construction Costs

Construction costs have been projected for potential alternatives to elements of a Kansas aqueduct as described in the 1982 Study. These alternatives include using a different approach to collect the source water from the Missouri River and using pipelines instead of canals for conveyance from the source reservoir to the terminal Reservoir.

##### 4.5.1.1 Missouri River Horizontal Collector Well System

This alternative considered the potential to use horizontal collector wells (HCWs) to collect source water from the Missouri River from a well field along the west river bank. Costs to install HCWs vary by depth and yield. The depth of the well has the greatest impact on HCW cost due to the labor associated with

sinking the well caisson. Deeper HCWs typically yield more water which requires larger pumping equipment. A specialized HCW contractor was contacted to obtain budgetary costs for constructing HCWs within Missouri River alluvium. The budgetary costs include the below grade and above grade HCW structures, including well house, pumps, valves and controls. These budgetary costs do not include costs for easements, construction of water transmission lines to connect the wells and discharge into the source reservoir, construction of required electrical services or costs to pump the water from the HCWs to the source reservoir. Figure 4.5 (a) provides a summary of the variability of the HCWs budgetary costs depending upon the diversion rate of the well system and based upon an assumed average HCW yield of 20 MGD.



**Figure 4.5 (a). Total HCW Costs as a Function of Diversion Rate.**

Figure 4.5 (a) shows that using HCWs as the source of water at the Missouri River would not be economically justified. As shown in Table 4.2 (b), for a 10,000 cfs system the projected costs for a lock and dam of \$269,000,000 are much less than the \$1,750,000,000 for the HCWs in Figure 4.5 (a). Additional costs to construct a HCW system as described would also be required and further increase the additional HCW costs versus those of the 1982 Study source. The logistical considerations of well field construction also make this alternative less attractive.

#### 4.5.1.2 Pipeline Conveyance Alternative

An alternative that uses pipelines instead of canals was considered to assess its potential impacts on costs. The cost advantages of using piping were anticipated to result from the pipeline using a shorter alignment (length) due to its being a pressure system, less excavation than for a canal, fewer relocations due to the ability to tunnel beneath obstacles and less land requirements due to its being buried. A simple straight line alignment between the source reservoir and the terminal reservoir yielded a total length of 280 miles. Approximately 10% (30 miles) was added to the pipeline alignment to account for potential required deviations from a straight line length due to unknowns. This alignment resulted in a pipeline length of 310 miles versus the 360 miles used for the canal.

The 1982 Study Appendix E-Cost and Design Manual was used as the basis for considering the pipeline alternative to be consistent with the original Alternate B, along with the following assumptions:

- Pipes are assumed to be prestressed, precast concrete pipes.
- Pipes are assumed to be installed with three feet of minimum cover.
- The maximum pipe diameter is 20 feet.

The pipe diameter and resulting numbers of parallel pipes were established using the formula below:

$$D = 0.981 \times Q^{0.375}$$

Where: D = Pipe diameter in feet.

Q = Pipe discharge in cfs.

The number of pipes for a given water transfer system size is shown in Table 4.5 (a).

<b>Table 4.5 (a). Number of Pipes, Diameters and Flow Velocity for Route B Water Transfer System.</b>			
<b>Water Transfer Discharge (cfs)</b>	<b>Number of Pipes</b>	<b>Diameter of Pipes (feet)</b>	<b>Flow Velocity (FPS)</b>
2,000	1	17	8.64
6,000	2	20	9.56
10,000	4	19	9.13

Costs were developed by using the cost data provided in the 1982 Study Appendix E-Cost and Design Manual. Unit costs include:

- Furnishing and laying pipe.
- Excavation and backfill of trench.
- Structures, manholes, valves and crossings.
- Site restoration.
- Unit costs include 10% miscellaneous items and 25% for contingencies.
- Unit costs are based upon pipes with a maximum diameter of 20 feet and using multiple pipes as required.
- The cost curve for 250 feet head pipe was used.
- Prices are price based to January 1979.
- Unit costs selected for use were:
  - \$2,200/LF for 2,000 CFS Option.
  - \$5,400/LF for 6,000 CFS Option.
  - \$8,500/LF for 10,000 CFS Option.

The number of tunnels was estimated using readily available maps and yielded an estimated total of 16 highway crossings and 21 waterway crossings. It is assumed that all tunnels were 300 linear feet in length and the total length is increased by 25% to account for unknowns. Unit costs for tunnels are

developed by using the cost data provided in the 1982 Study Appendix E-Cost and Design Manual. Unit costs included:

- Excavation.
- Concrete lining.
- Cement.
- Steel supports.
- Timber lagging.
- Unit costs include 10% miscellaneous items and 25% for contingencies.
- Prices are price based to January 1979.
- Unit costs selected for use were:
  - \$4,300/LF for 2,000 CFS Option.
  - \$10,500/LF for 6,000 CFS Option.
  - \$15,500/LF for 10,000 CFS Option.

The same number of pumping stations is used as in the 1982 Study. Unit costs for pumping stations were developed by using the cost data provided in the 1982 Study Appendix E-Cost and Design Manual. Unit costs assumptions include:

- All pump station costs were based upon using identical pump stations with 250 feet of total head.
- Prices are price based to January 1979.
- Costs are estimated to be:
  - \$42M per pump station for 2,000 cfs Option.
  - \$115M per pump station for 6,000 cfs Option.
  - \$186M per pump station for 10,000 cfs Option.
  - Per the 1982 Study, a 33.3% allowance was included for two pumps per station per flow option to account for the Storage reservoir and River Intake facilities.

Construction cost comparisons between the canal conveyance and pipeline conveyance systems are shown in Figure 4.5 (b). From this figure, it can be seen that construction of the pipeline conveyance system is much more costly than using a canal system.

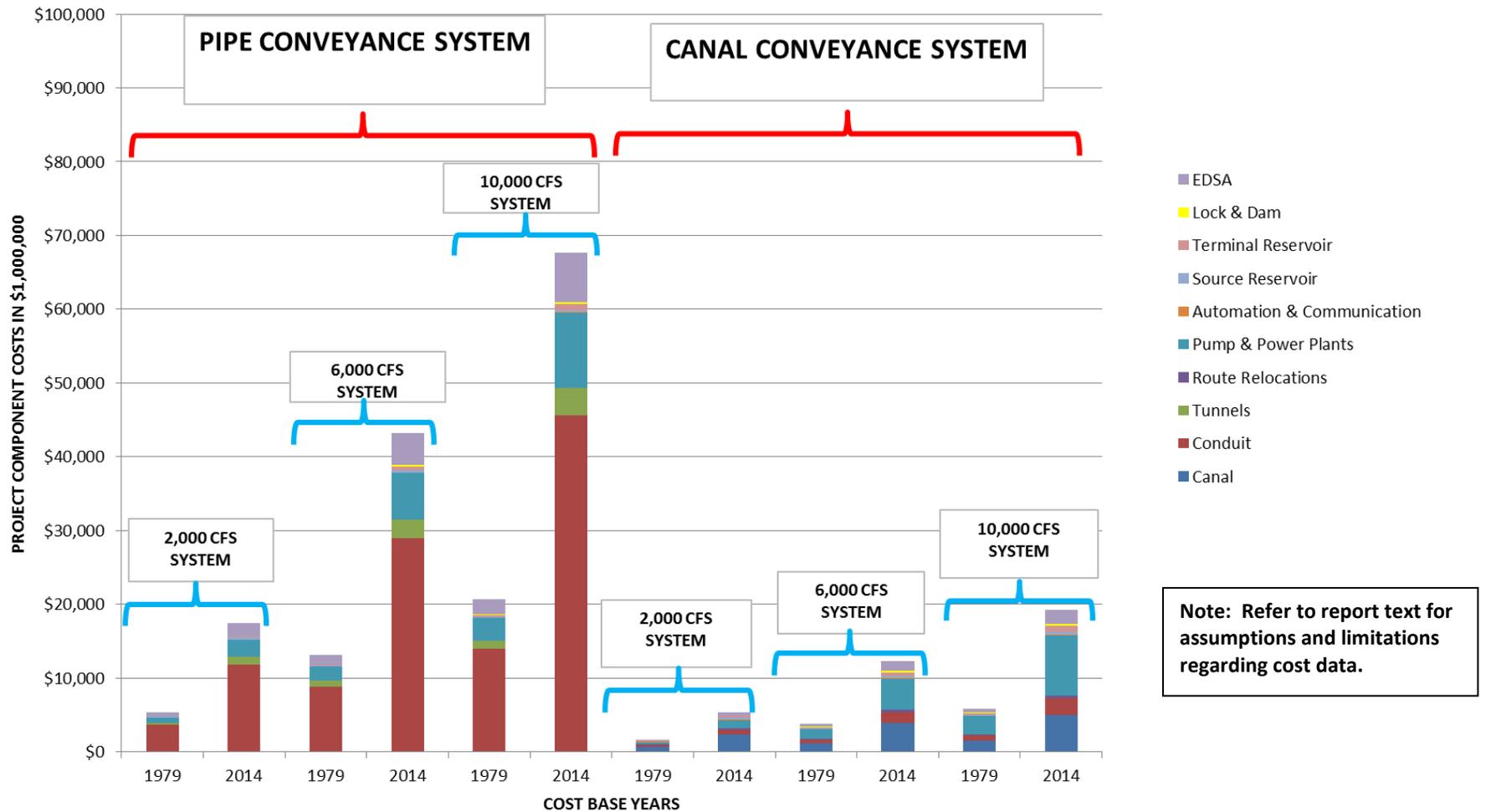


Figure 4.5 (b). Comparison of Pipeline versus Canal Conveyance System Construction Costs for Given Water Transfer System Rates

Costs for land acquisition were developed based upon the 1982 Study Appendix E-Cost and Design Manual. Land costs of \$1,300 per acre (year 1979) are taken from the reference along with the required number of acres for canals based upon discharge rates, which are:

- 52 acres/mile for the 2,000 cfs system. Width calculated to be 429 feet.
- 87 acres/mile for the 6,000 cfs system. Width calculated to be 718 feet.
- 108 acres/mile for the 10,000 cfs system. Width calculated to be 891 feet.

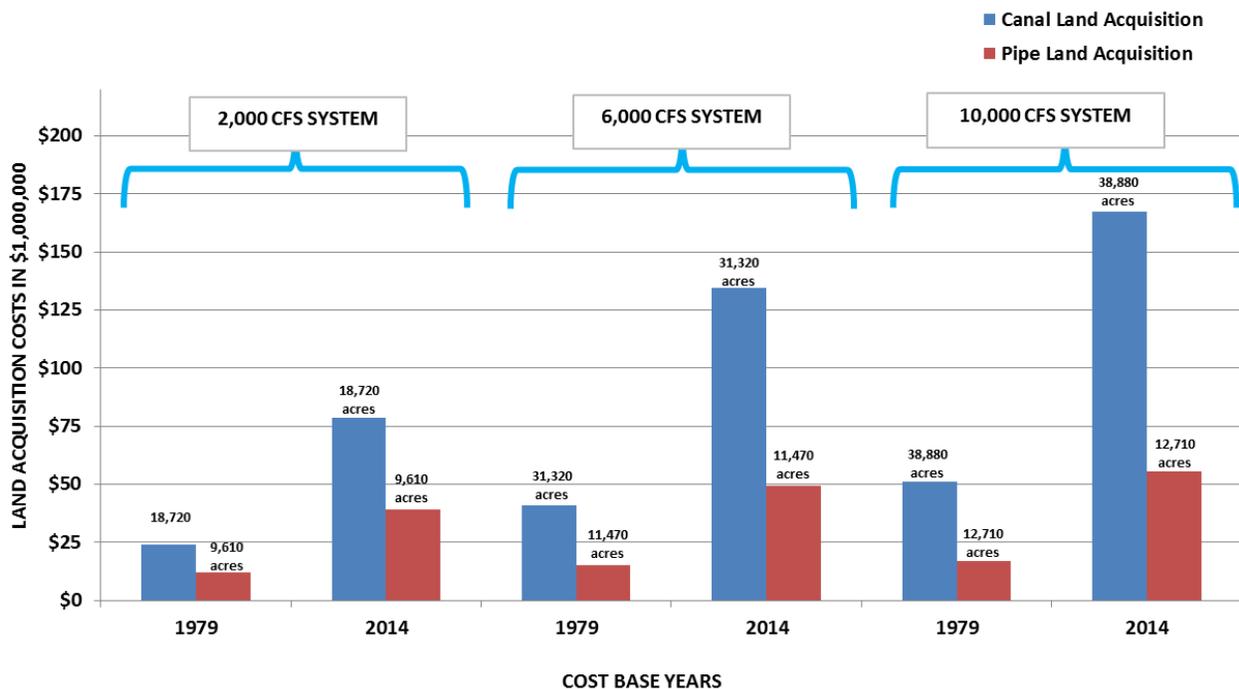
Land requirements for the pipelines were estimated based upon the following width assumptions:

- Total width of pipes.
- Providing two pipe diameters on each side of the pipes.
- Providing an additional width of 200 feet.

These assumptions yield the following area and width requirements for the pipelines.

- 31 acres/mile for the 2,000 cfs system. Width calculated to be 255 feet.
- 37 acres/mile for the 6,000 cfs system. Width calculated to be 305 feet.
- 41 acres/mile for the 10,000 cfs system. Width calculated to be 340 feet.

Cost comparisons for land acquisition between the canal conveyance and pipeline conveyance systems are shown in Figure 4.5 (c). From this figure it can be seen that although the pipeline conveyance system land acquisition costs are less than for a canal system, they do not offset the large construction cost increases for a pipeline conveyance system.



**Figure 4.5 (c). Comparison of Land Acquisition Areas and Costs for Pipeline versus Canal Conveyance System for Given Water Transfer System Rates**

Figures 4.5 (b) and 4.5 (c) show the canal conveyance system is the lesser cost alternative for the water transfer system.

#### 4.5.2 Construction Cost Comparisons with Selected Regional Water Supply Studies and Projects

Locations of the other regional water systems selected for comparison to a Kansas aqueduct are shown in Figure 4.5 (d) and are summarized below:

- Binational Desalination Project.** This project is being investigated by the Salt River Project (SRP) and Central Arizona Project (CAP), in consultation with the Arizona Department of Water Resources (ADWR), United States Bureau of Reclamation and the Comision Estatal del Agua, Sonora (CEA) to deliver 1.2M AF/Y of Gulf of California water to the Imperial Dam in California. The water source would be a desalination plant near Puerto Penasco, Mexico and use 168 miles of canal for conveyance.
- Colorado River Basin Study.** This study presents information on major regional water conveyance projects with the Colorado River as the source of supply. The study defines imbalances in water supply and demand through 2060.
- Central Arizona Project.** The CAP is a major regional water supply project that was constructed from 1973 to 1993. It diverts water from the Colorado River via canals for multiple uses.

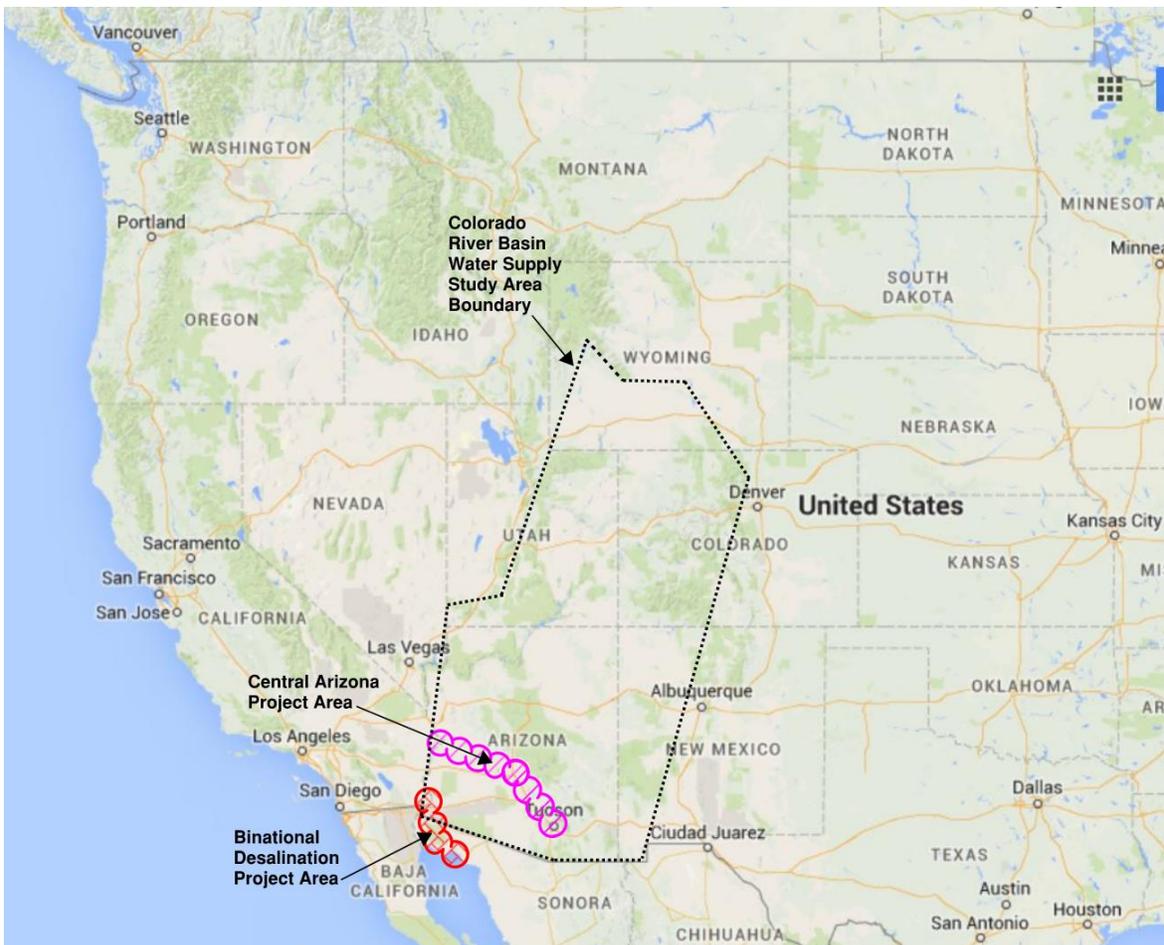


Figure 4.5 (d). Regional Water Systems Selected for Comparison

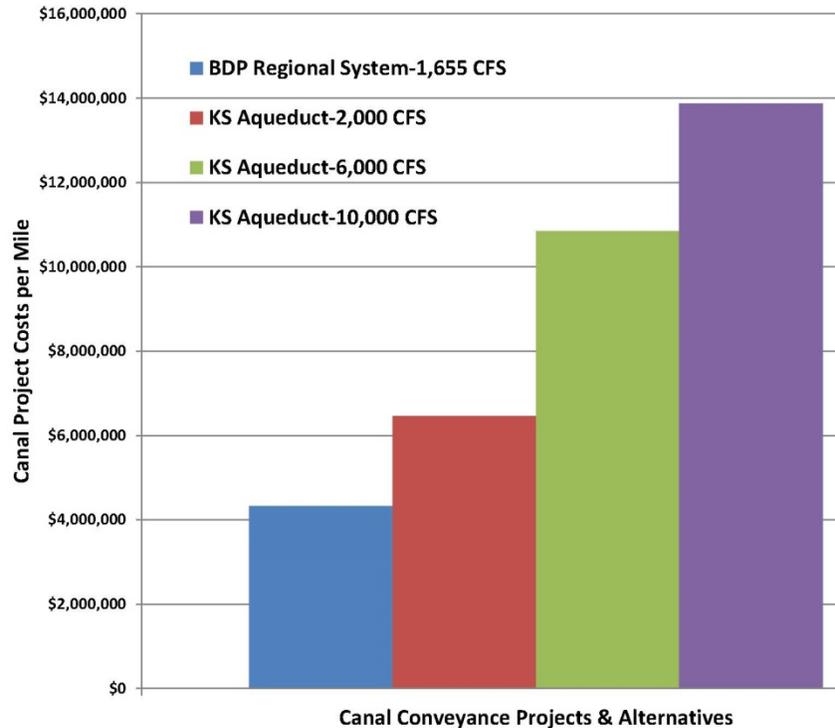
Projected construction costs for a Kansas aqueduct were contrasted against selected construction costs for the Binational Desalination Project and the Central Arizona Project.

#### 4.5.2.1 Binational Desalination Project

The Binational Desalination Project (BDP) would use a canal system to convey water to its point of use similarly to a Kansas aqueduct as described in the 1982 Study. A comparison of features of these two projects is provided in Table 4.5 (b).

<b>Table 4.5 (b). Comparison of Kansas Aqueduct and BDP Project Features.</b>		
<b>Project Features</b>	<b>Kansas Aqueduct</b>	<b>BDP</b>
Aqueduct Canal Length (miles)	360	168
Aqueduct Canal Bottom Width (feet)	24-54	24
Aqueduct Capacity (cfs)	2,000-10,000	1,655
Aqueduct Water Depth (feet)	12-26	NA
Vertical Lift (feet)	1,610	181
Storage Reservoirs	2	0
Pumping Stations	15	4
Hydro-Generation/Pumping Stations	1	0
Water Delivered (1,000,000,AF/year)	1.0-3.2	1.2

Canal construction costs per mile are compared between a Kansas aqueduct and the BDP in Figure 4.5 (e).



**Figure 4.5 (e). Comparison of Canal Construction Costs in \$/Mile for Kansas and BDP Projects**

The site conditions vary between these projects, such as types of soils, amount of rainfall, groundwater, geotechnical conditions, number of water courses that must be crossed and other factors that would impact the costs for each project differently and therefore only a general comparison of costs can be made. However the cost range for the larger canals of a Kansas aqueduct appear to compare favorably with those projected for the BDP.

#### 4.5.2.2 Central Arizona Project (CAP)

The Central Arizona Project (CAP) uses a canal system to convey water to its point of use similarly to a Kansas aqueduct. A comparison of features of these two projects is provided in Table 4.5 (c). Data related to a Kansas aqueduct is taken from the 1982 Study and data related to the CAP is from the Bureau of Reclamation website on the Central Arizona Project.

<b>Project Features</b>	<b>Kansas Aqueduct</b>	<b>CAP</b>
Aqueduct Canal Length (miles)	360	336
Aqueduct Canal Bottom Width (feet)	24-54	12-80
Aqueduct Capacity (cfs)	2,000-10,000	2,250-3,000
Aqueduct Water Depth (feet)	12-26	10-25
Vertical Lift (feet)	1,610	2,900
Storage Reservoirs	2	1
Pumping Stations	15	14
Hydro-Generation/Pumping Stations	1	1
Water Delivered (1,000,000,AF/year)	1.0-3.2	1.5

Project construction costs are compared between a Kansas aqueduct and the CAP in Table 4.5 (d). All costs are expressed in year 2014.

<b>Project</b>	<b>Construction Costs</b>
KS Aqueduct @ 2,000 cfs w/1.0 MAF/Year	\$5,376,000,000
KS Aqueduct @ 6,000 cfs w/2.4 MAF/Year	12,231,000,000
KS Aqueduct @ 10,000 cfs w/3.2 MAF/Year	19,193,000,000
CAP @ 2,250-3,000 cfs w/ 1.5 MAF/Year	7,895,000,000

The comparison of first costs in Table 4.5 (d) (does not include interest costs) shows that the costs projected for a Kansas aqueduct are comparable to those for the CAP.

#### **4.5.3 Delivered Water Costs for Selected Regional Water Supply Projects**

Available water costs (\$/AF) are compared for selected regional systems against those projected for a Kansas aqueduct in Figure 4.5 (f).

##### **4.5.3.1 Colorado River Basin Study**

The Colorado River Basin projected anticipated water costs for a number of different sources including:

- Imports to Colorado Front Range from Missouri or Mississippi Rivers.
- Imports to Green River from Bear, Snake or Yellowstone Rivers (high).
- Imports to Green River from Bear, Snake or Yellowstone Rivers (low).
- Desalination-Gulf of California.
- Desalination-Pacific Ocean California.
- Desalination-Pacific Ocean Mexico.
- Reuse-Municipal Wastewater.

The range of delivered water costs is from \$700/AF to \$2,100/AF depending upon the source. These costs are all greater than the range of \$452/AF to \$497/AF projected for a Kansas aqueduct.

#### **4.5.3.2 Central Arizona Project (CAP)**

The CAP uses a number of different rate structures for delivered water depending upon the category of customer based upon rate information approved on June 5, 2014, and provided in the Central Arizona Groundwater Replenishment District website. The highest rate for 2014 is \$189/AF for certain municipal customers. This value is shown in Figure 4.5 (f).

The delivered water rates comparison shown in Figure 4.5 (f) indicates that the projected delivered water rates are within the range of the rates currently being charged by CAP, and are less than the rates of other regional projects under consideration in the Colorado River Basin.

#### **4.5.4 Limitations and Precautions**

Previous limitations and precautions regarding a Kansas aqueduct cost projections apply to these costs comparisons. In addition, these comparisons are based on high-level, aggregated cost information of similar, but different systems. Unknowns related to these other systems may cause inaccuracies in the presented cost comparisons.

### **4.6 Cost Risk Analysis and Potential Mitigation**

A risk analysis for the projected costs has been developed to identify areas of significant project risk and the associated effects on project cost uncertainty. Risk mitigation strategies that may help reduce projected cost uncertainties are presented.

#### **4.6.1 Areas of Significant Project Risk**

Areas of significant project risk may be broadly categorized as risks associated with project definition and risks associated with project costs.

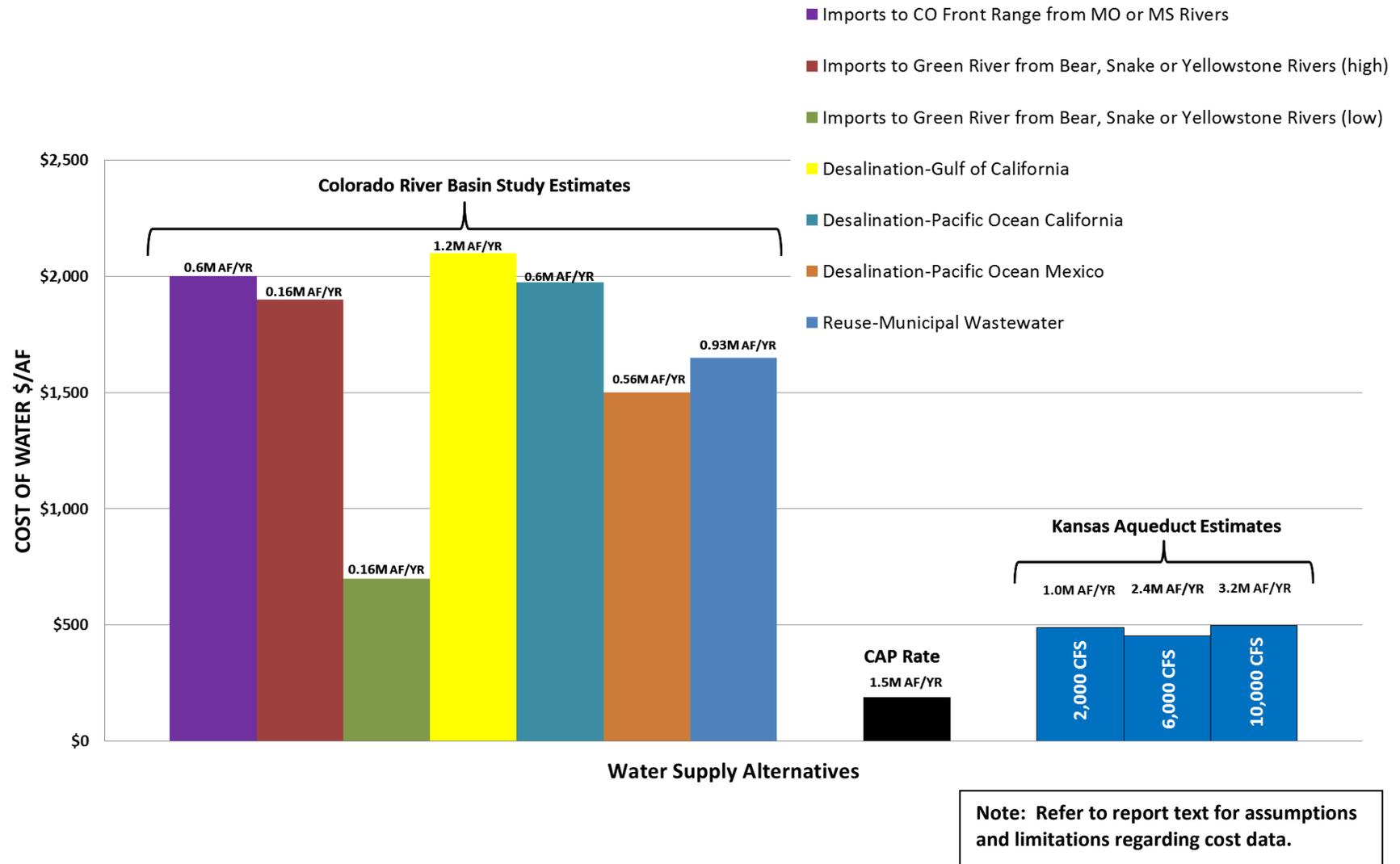


Figure 4.5 (a). Comparison of Delivered Water Costs in \$/AF for Kansas Aqueduct, CAP and the Colorado Basin

#### **4.6.1.1 Risks associated with project definition encompass the level of understanding and recognition of project cost elements such as:**

- Construction of the water supply and transfer system elements such as intakes, dams, reservoirs, canals, pipelines (conduits), pumping stations, hydropower facilities, pumping stations, automation and communication, route relocations and other project facilities that are constructed. Developing construction costs for these items is reliant upon the information available at the time the costs are estimated. A reconnaissance level study such as the 1982 Study was not able to develop detailed information regarding details relating to site conditions and the facilities to be constructed. Assumptions were used to account for these cost elements, however the accuracy of the costs estimated are directly related to the accuracy of these underlying assumptions.
- Construction of water distribution system elements downstream of the terminal reservoir required for conveying water to the customers. The 1982 Study did not define, investigate and develop costs for this water distribution system.
- Operation and maintenance costs are dependent upon the facilities constructed, staffing, system management, level of service desired and funding being available to support these efforts. These specifics are yet to be determined.
- Repair, replacement and rehabilitation costs are dependent upon the facilities constructed and the operations and maintenance program.
- Environmental costs rely upon the scope of environmental assessments to be performed; impacts identified and required environmental mitigation measures. Environmental mitigation measures typically impact the approach to facility design and construction, and their associated costs. The 1982 Study environmental assessment was a broad-based reconnaissance level effort that concentrated on significant environmental impacts, only considered impacts associated with the construction of the canals or other transfer facilities and the physical effects along the canal routes during operation and was based primarily on data found in published sources and available files at the time. Current environmental constraints are discussed further in Chapter 6-Environmental Constraints.
- A limited investigation of cultural resources was performed in the 1982 Study and indicated the area is rich in cultural resources. For the purposes of this study, the entire 1% of authorized project costs was used to estimate costs for the preservation of cultural resources.
- Legal requirements associated with a project may require significant expenditures of time and funds. Legal requirements are investigated and discussed further in Chapter 5-Legislative and Legal Review.
- Political requirements and building consensus to support a project may require significant expenditures of time and funds. Political requirements are investigated and discussed further in Chapter 7-Political Assessment.
- Funding and cost recovery sources needed to support a project's implementation were not identified or investigated. This includes identifying potential sources of funding for project implementation and for amortization of initial project costs and annual expenses. A customer base and ability to pay the necessary rate structure would be required.
- Site conditions greatly impact project costs. Site conditions include existing facilities that would be impacted by construction such as utilities, roads, railroads and other improvements; changes to the site since the original 1982 Study; environmental conditions such as streams, rivers, lakes

and other features; geotechnical conditions that can impact both design and construction; contaminated sites along a project that may require special permitting and construction materials and techniques; restrictions on land usage that may require additional length or costs to accommodate and other conditions.

#### **4.6.1.2 Risks associated with project cost include the sources of data used to develop the actual costs applied to the elements described by project definition and include:**

- Construction cost sources including other projects, information provided by contractors and suppliers, estimating guides and other sources. Other projects costs are based on other projects that may differ from those encountered on this project. Estimating guides provide general costs that would not reflect disproportionate costs of high value special equipment such as large pumps.
- Operations and maintenance cost sources including other facilities, service company quotations, manufacturer recommendations, estimating guides and other sources. These sources reflect factors from other projects or general industry data that may not apply to this project.
- Energy cost sources including information from utilities, consultants, published rates and other sources. These are generalized costs that may not reflect the actual costs for this project.
- Interest and amortization cost sources including lending institutions, the Federal Water Resources Council (used for the 1982 Study) and other sources. It is not known that these interest rates would be available for this project or if higher rates would be required.
- Cultural investigation and mitigation cost sources including other projects, specialty consultant estimates and other sources. These costs are based upon other projects that may differ in scope and cost from this project.
- Potential volatility and uncertainty of construction materials availability, pricing, labor, energy and land acquisition.
- Funding and cost recovery sources may include experience on past projects, published data on funding sources, published data on potential customer needs, published rate studies and other sources. The funding source and customer base would be specific to this project and have not been investigated. A project may not be able to be constructed if funding cannot be secured along with a customer base that is able to pay for project amortization at an acceptable rate.
- Industry-accepted cost indexes were used to adjust costs from one year to a different year or from one location to another. Use of these indices relies on the accuracy of the original (base) year estimates, and does not account for project-specific cost factors.
- Contingencies were used to account for unknowns and sources may include past projects, past practices, published guidelines and other sources. Contingencies need to be revisited and refined as a project progresses.

#### **4.6.2 Potential Mitigation Measures for Cost Risks**

As a project matures and moves forward, an increasing level of resolution will become available for both project definition and cost estimating. Potential mitigation measures for reducing risks of inaccuracies and uncertainties in project costs should focus on:

- Improving the resolution of project definition.

- Improving the relevancy of the sources of cost data including compiling recent construction bid tabulations and assessing the relevancy of the construction elements to the specifics of a Kansas aqueduct project.
- Development of updated construction quantities.
- Accounting for cost elements that were not included in the original 1982 Study such as the cost of a water distribution system from the terminal reservoir to the end users.

## 4.7 Summary of Findings

A summary of the findings of Chapter 4-Cost Estimates is presented below.

1. A Kansas aqueduct was evaluated and defined in the High Plains-Ogallala Aquifer Regional Resources Study and its Appendix B - Reconnaissance Study Alternative Route B Water Transfer from the Missouri River to Western Kansas in September, 1982. These documents along with other appendices provided the assumptions for project definition and cost elements used in this task.
2. This study presents updates to various components of the 1982 Study, including a high-level update of potential costs. For the purposes of this study update, the updated cost information should be viewed as a range of costs. The updated cost information presented herein is very preliminary, is based on readily available information, many assumptions and is subject to change. Project definition may be considered to be at the conceptual stage, with many project components yet to be determined. Many of the related cost implications are yet to be determined and quantified. Table 4.1 (a) presents cost range information for projects at the conceptual stage. By applying mid-range percentages from Table 4.1 (a) to the cost information presented in Figure 4.5 (f) and Table 4.4 (b), the 2014 delivered water costs may be in the range of \$300 per acre-foot to \$800 per acre-foot.
3. A project was evaluated for water transfer delivery systems of 2,000 cfs, 6,000 cfs and 10,000 cfs.
4. The Engineering News Record Historical Construction Cost Index to adjust costs from 1979 to 2014 (August) is (9846/3003) which yields a composite adjustment of 3.27872.
5. The FY 2014 Federal Water Resources Council published rate of 3-1/2 % was used for amortization and computation of the 2014 annualized project costs.
6. An evaluation of using horizontal collector wells for the source at the Missouri River or pipelines instead of canals for conveyance indicated that this alternative was not economically attractive.
7. The delivered water costs for a Kansas aqueduct were found to be within the range of the rates currently being charged by the Central Arizona Project.
8. The delivered water costs for a Kansas aqueduct were found to be less than the rates of other regional water supply systems under consideration in the Colorado River Basin.
9. There are potential risks and uncertainties associated with the current projected project costs. These risks and uncertainties may be reduced by increasing the level of resolution for project definition and the project cost sources.

# Update of 1982 Six State High Plains Aquifer Study

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## Chapter 5: Review of Legal and Legislative Issues

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## **5.1 Legal Review Introduction**

The Legal review was submitted to Kansas Water Office (KWO) by Pope Consulting, LLC as an issue evaluation for a Kansas Aqueduct Study. The purpose of the evaluation is to review various legal, institutional and social-political issues related to the potential transfer of water from the Missouri River to western Kansas. The principals who conducted this review are David L. Pope of Pope Consulting, LLC and its subcontractor, Leland E. Rolfs of Leland Rolfs Consulting. The scope of work for this project was based generally on the Scope of Study from the Cost Sharing Agreement for Planning Assistance to States between the U.S. Army Corps of Engineers (Corps) and KWO (Appendix 2).

In general, this paper includes an evaluation of whether a Kansas aqueduct concept conflicts with existing legislation and what process and criteria would be required to comply with Kansas laws and requirements, including: the Kansas Water Appropriation Act; the interstate river compacts to which Kansas is a party; the possibility of storing water in existing lakes and reservoirs along the aqueduct route; requirements of the Kansas Stream Obstructions Act, including environmental review; the relationship of such a project to the provisions of the 1944 Flood Control Act (Pick-Sloan Program), and potential water quality implications and impacts along the aqueduct corridor at a general level. In addition to background information, the major sections of this paper will examine: 1) legal issues in obtaining water at the source; 2) legal issues in transporting and dropping off, water along the aqueduct; 3) legal issues at the destination; 4) institutional issues and 5) a general political assessment.

## **5.2 Legal Issues in Obtaining Water at the Source**

### **5.2.1 Missouri River Background**

The Missouri River is the largest river that flows through or adjacent to the State of Kansas. While issues related to the use of water from the river are complex, it potentially provides a very large water supply for use in Kansas. Beginning in the Rocky Mountains near Three Forks, Montana, the Missouri River flows east and south for 2,341 miles before entering the Mississippi River north of St. Louis, Missouri, making the Missouri River the longest river in North America and a major waterway in the central United States. The Missouri River Basin covers one-sixth of the lower 48 states.<sup>1</sup> The mainstem of the river flows through or adjacent to seven states – Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri and the lands of many of the American Indian Nations in the Missouri River Basin. The basin also includes portions of Colorado, Wyoming and Minnesota and a small portion of Canada. It is an extremely diverse basin in many respects. Its geography varies from the mountains of the upper basin to the low lands of Missouri. There are sparsely populated rural areas, Indian reservations, major cities, grasslands and rich agricultural areas, valuable natural and environmental resources and significant cultural diversity among the basin's people.

The Missouri River Basin is also one of the most complex basins to manage in the country because of its size and the vast differences that exist in geography, hydrology, climate, culture and other characteristics. From a water law standpoint, the general body of water law ranges from the general application of the Prior Appropriation Doctrine in the seven states located partially or totally west of the 98<sup>th</sup> meridian in the drier portions of the basin, to the general application of the Riparian Doctrine in the State of Missouri and a permit system in Iowa and Minnesota, all located in the wetter, eastern and southern part of the basin. In addition to the ten states located partially or totally in the basin, twenty eight American Indian Tribes are located in the basin, generally on reservations established by the treaties with the United States or congressional act.



Figure 5.2 (a). Missouri River Basin.

The history and the hydrological record indicate that the flows of the Missouri River are highly variable due to large floods and major droughts in the Missouri River Basin. The water source is derived from mountain snowpack, plains snowpack and rainfall runoff or a combination of the three at any given time. Numerous large flood events on the Missouri River occurred prior to the construction of the six large Missouri River mainstem reservoirs authorized by the 1944 Flood Control Act. While damage caused by floods has been substantially decreased since the construction of these large reservoirs and the other smaller tributary reservoirs that were constructed in the basin, some flooding along the Missouri River still occurs, including recent large floods in 1993 and 2011. On the other extreme of the hydrological cycle, the drought of the 1930's caused major economic losses and social disruption in the Missouri River Basin. Other significant droughts have also occurred in more recent years.

Finally, historic water resources development has changed land and water use in the basin in a major way, especially as a result of the Missouri River Basin Project, (now known as the Pick-Sloan Program), that was authorized by the Flood Control Act of 1944. Just after the Flood Control Act of 1944<sup>2</sup> was passed, Congress also enacted the 1945 River and Harbors Act<sup>3</sup> that authorized a 9 foot deep navigation channel downstream of Sioux City, Iowa. This was an expansion of the six foot navigation channel

previously authorized from Kansas City to the mouth in 1912 and to Sioux City in 1927. This ultimately resulted in the establishment of what is now known as the Missouri River Bank Stabilization and Navigation Program (BSNP) from Sioux City, Iowa to the mouth of the Missouri River near St. Louis, Missouri. As a result of this, the Missouri River Mainstem Reservoir System operated by the Corps, is a dominating feature of water resources development in the basin. Its operation has a profound effect on the flows of the river, the availability of water for various purposes along the river and has historically had a major effect on water issues, environmental resources and the associated relationships among the States, Tribes and other interests in the basin.

## 5.2.2 Native American Issues

### 5.2.2.1 Federal Reserved Rights

In 1908 the United States Supreme Court ruled in the *Winter's* case<sup>4</sup> that it was implied when the federal government agreed to the establishment of Indian Reservations, that a sufficient amount of water was reserved to satisfy the intended purposes of the Indian reservation. This effectively exempted Federal Reservation Rights from normal state laws related to the appropriation of water because this water was reserved and a priority date established, as of the date the reservation was created. While water already appropriated prior to the date of the reservation was created is not available to fulfill the reservation right, in reality, there are very few appropriation rights in Kansas that would precede the date of any Indian reservation in Kansas. This is known as the *Winters Doctrine*.

Later, in 1963, the United States Supreme Court held<sup>5</sup> that the amount of water reserved should not be measured by the reasonably foreseeable needs of the reservation, or the number of Indians, but by the amount of water necessary to irrigate the practicably irrigable acres (PIA) on the reservation. Later court decisions have expanded or altered that standard to include waters necessary for fish spawning or habitat, etc.<sup>6</sup>

Other issues involve what the water can be used for, whether it can be used off reservation and whether the *Winters Doctrine* applies only to surface water, or whether groundwater can be included when these rights are quantified. These federal reserved rights are not subject to abandonment so long as they remain owned by the Tribe or its individual members.<sup>7</sup>

American Indian Tribes on the Indian Reservations located within the State of Kansas each have Federal Reserved Rights. There are an additional twenty four American Indian Tribes in the Missouri River Basin that have Federal Reserved Water Rights located upstream of the proposed point of diversion on the Missouri River. Many of these rights have not been quantified, so the specific amounts and other parameters of them are not known, but the *Winters Doctrine* indicated that they are to be sufficient to satisfy the intended purposes of the Indian Reservation for use by the Tribe or Tribes. This amount of water could be quite significant. While much of this water is not currently being used, if and when in the future it is utilized, it could affect the rate and quantity of water available from the Missouri River at White Cloud, Kansas. The existence of these rights and their potential effect on the supply of water available are issues that will need to be considered if an aqueduct project is to be built.

The primary ways to quantify Federal Reserved Water Rights are through a negotiated settlement process or litigation. The *McCarran Amendment*<sup>8</sup> provides that the United States waives its sovereign immunity so that federal reserved water rights may be determined in a **state court** in conjunction with a general stream adjudication, so that all the water rights in a given common hydrological area could be determined and administered as a system. Two states in the Missouri River Basin have sought to resolve Federal Reserved Water Rights as a part of their general stream adjudication processes. The

State of Wyoming litigated issues related to such rights for many years with Tribes located on the Wind River Reservation.

The State of Montana established a Reserved Water Rights Compact Commission in 1979 to conclude compacts for the equitable apportionment of water between the State and the Indian Tribes claiming Federal Reserved Water Rights in Montana, as well as such rights claimed by the Federal Government on land held for National Parks, National Forests and other purposes. Since its inception the Commission has negotiated and the Legislature approved, 17 compacts with six Tribes and five federal agencies in Montana.<sup>9</sup>

### **5.2.2.2 Potential Tribal Water Supply**

Kansas four Indian reservations: 1) The Sac and Fox Indian Reservation, 2) the Iowa Tribe reservation, 3) the Kickapoo Reservation and 4) the Prairie Band Potawatomie Nation, are all located in the vicinity of the aqueduct diversion, the source reservoir and/or aqueduct route in northeast Kansas. While the water supply of each of the Tribes was not evaluated in the 1982 Study, the potential need for water supply by the Kansas Tribes is an issue that should be considered carefully. It is well known that the Kickapoo Tribe is short of water during periods of drought. The Kickapoo Tribe currently obtains its water from a small reservoir located on the upper reaches of the Delaware River. During times of low flow the reservoir cannot supply sufficient water to meet the tribe's needs and at times water has had to be trucked in to meet even minimal needs of the tribe. The aqueduct route crosses the Delaware River just upstream of the Kickapoo Reservation and could likely be used to provide a supplemental water supply to that reservation. It is possible that some or all of the other Tribes could benefit from an additional supply of water from an aqueduct project.

### **5.2.2.3 Historic and Cultural Resources**

Historic and cultural resources are extremely important to the American Indian Tribes in the Missouri River Basin, including the four Tribes located in Kansas. Several federal laws have been passed to help protect these resources, including the Native American Graves Protection and Repatriation Act<sup>10</sup>, the Archeological Resources Protection Act,<sup>11</sup> and the National Historic Preservation Act<sup>12</sup>. See also the Kansas Historic Preservation Act<sup>13</sup>. The current Indian reservations for the Kansas Tribes are in the vicinity of the aqueduct facilities. The historic and cultural resources of Native Americans could be affected along the entire area and route of the aqueduct and in the vicinity of the source and terminal reservoirs. As a result, during project studies, planning and any future construction, careful consideration will need to be given to the impact of an aqueduct project on these historic and cultural resources in any area affected by the project.

### **5.2.3 1944 Flood Control Act and the Pick-Sloan Program**

A brief review of the Missouri River Basin Project authorized by the 1944 Flood Control Act<sup>14</sup> is included herein due to its extremely important impact to the flows of the Missouri River, operation of most of the tributary reservoirs operated by the Federal government and the impact to the potential water supply for the Kansas Aqueduct Study being evaluated in part herein. In the 1940's, congressional debate occurred on the 1944 Flood Control Act<sup>15</sup> (1944 FCA), legislation that would provide for installation of the enormous dams on the Missouri River and many other smaller dams on the tributaries. During the debates, the Congress recognized ongoing damage to various facilities, as well as the loss of agricultural production caused by the flooding and the value of storing high flows for later use during periods of drought. Other significant reasons for passage of the 1944 FCA were to create large federal irrigation projects, the production of hydropower and to provide storage for navigation, water supply and other

uses.<sup>16</sup> The U.S. Army Corps of Engineers (Corps) and U.S. Bureau of Reclamation (Bureau) had each developed competing plans for water resources development in the basin. Ultimately, these differing plans were reconciled in a Joint Report and approved by Congress when the 1944 FCA was passed. The Report states that the basin's development is to secure benefits for "flood control, irrigation, navigation, power, domestic and sanitary purposes, wildlife and recreation". In 1970, Congress officially changed the name of the Missouri River Basin Program to the Pick-Sloan Missouri Basin Program (Pick-Sloan Program), acknowledging the coordination of the Corps developed "Pick Plan" and the Bureau developed "Sloan Plan" into the comprehensive plan authorized in 1944.<sup>17</sup>

Some important language was included in the 1944 FCA that appears to be relevant to a potential Kansas aqueduct from the Missouri River. The 1944 FCA<sup>18</sup> declared that it was "...the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible extent established and potential uses, for all purposes, of the waters of the Nation's rivers; to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized there from and which can be operated consistently with appropriate and economic use of the waters of such river by other users." The 1944 FCA also included the 'O'Mahoney-Millikin Amendment'<sup>19</sup> which includes the following language:

"The use for navigation, in connection with the operation and maintenance of such works herein authorized for construction, of waters arising in states lying wholly or partly west of the ninety-eighth meridian shall be only such use as does not conflict with any beneficial consumptive use, present or future, in States lying wholly or partly west of the ninety-eighth meridian, of such waters for domestic, municipal, stock water, irrigation, mining or industrial purposes."<sup>20</sup>

The Missouri River Basin Project, authorized by the 1944 FCA and known as the Pick-Sloan Program, envisioned a comprehensive system of flood control, navigation improvement, irrigation, municipal and industrial water supply and hydroelectric generation facilities within the 10 states in the Missouri River Basin. As originally planned, the project was to include 213 single and multiple-use projects, providing 1.1 million kilowatts of hydroelectric capacity and irrigation for 5.3 million acres of farmland. The plan was only partially completed; however, it completely changed water resource development in the basin. There are 548,578 acres of farmland irrigation currently being served through twenty-six Bureau irrigation units that were constructed through the Pick-Sloan Program, including four in Kansas. The reduction in the amount of irrigated farmland from the amount originally planned to that actually constructed is largely the result of the large irrigation projects in the upper portion of the basin not being completed, including the Oahe Unit in South Dakota and the Garrison Unit in North Dakota. However, the Garrison Unit was reformulated later to include a relatively small amount of irrigated land. More recent projects in both North Dakota and South Dakota have focused on construction of large rural water projects to distribute potable water to rural areas of these states from the Missouri River, although the total amount of water use is relatively small. In addition, 2,980.8 megawatts (2.98 million kilowatts) of hydroelectric capacity has been installed at Pick-Sloan projects, including 2501 megawatts at the six Corps mainstem dams.<sup>21</sup> This is almost three times the amount originally planned. In addition to the twenty-six Bureau projects and the six mainstem reservoirs, the Corps constructed a number of tributary reservoirs in the basin, primarily for flood control, water supply and recreation, including seven reservoirs in the Kansas portion of the basin.

The Missouri River Mainstem Reservoir System continues to be operated in accordance with the 1944 FCA for the eight authorized purposes. The reservoir system is operated in accordance with a Master

Water Control Manual (Master Manual) and Annual Operating Plans developed each year by the Water Management Office of the Corps in Omaha, NE, a part of the Northwestern Division headquartered in Portland, OR.<sup>22</sup> While the future envisioned by the framers of the 1944 FCA did not materialize as expected, the operation of the reservoir system has a huge effect on water management and the social, political, economic and environmental values in the basin. The construction of the mainstem reservoir system and other works resulted in more beneficial economic development in some parts of the basin than others. Large project benefits occurred from some of the authorized purposes, such as flood control, hydropower and water supply, while much less benefits resulted from others. The large irrigation projects proposed in the upper basin were not constructed. While the navigation system was constructed, the amount of cargo shipped has been far less than expected. Recreation has emerged as an important use, especially from the mainstem reservoirs in the upper basin, and water supply is important throughout the basin. Largely unforeseen at the time, the 1944 FCA also created substantial negative impacts on the economies and resources of the American Indian Tribes, primarily through the inundation of tribal land when the reservoirs were constructed. In addition, the Tribes did not share in much of the economic benefits from the Pick-Sloan Program, whether from the mainstem reservoirs or the many tributary projects.

The mainstem reservoir system includes six large dams that have the capacity to store over 74 million acre feet, not counting exclusive flood control storage, about three times the river's average annual runoff above Sioux City, Iowa, located just downstream of the last reservoir on the mainstem reservoir system.<sup>23</sup> The upper three reservoirs are the first, second and third largest Corps reservoirs in the country. Some of Missouri River in eastern Montana and most of the Missouri River in North Dakota and South Dakota is inundated by the six reservoirs. For comparison, Milford Reservoir, the largest of the Federal reservoirs constructed in Kansas, is currently estimated to store 343,885 acre feet at the normal conservation pool level, not counting the flood pool.

In response to a protracted drought in the 1980's, shifting priorities and a request from some of the States in the basin, the Corps undertook a revision to the Master Manual in 1989.<sup>24</sup> This review process was the subject of much dispute over a period of 14 years. The revised Master Manual was finally adopted in 2004, followed by extensive litigation in the basin.<sup>25</sup> Ultimately the Federal Courts upheld the Revised Master Manual, but also rendered some significant legal decisions about various contested issues in the basin. In addition to major disputes during the Master Manual process between upstream and downstream interests over how much water should be stored for upstream uses, such as recreation, versus downstream releases for navigation, water supply and power plant cooling, major environmental concerns were also identified through the National Environmental Policy Act (NEPA) process and the preparation of the Environmental Impact Statement (EIS). By then it was well known that the construction and operation of the reservoirs and the BSNP had caused large environmental losses, such as wetlands and habitat for a number of native species. This resulted in the establishment of the Fish and Wildlife Mitigation Program for the reaches of the Missouri River below Gavins Point Reservoir. However, the listing of three of these species as threatened or endangered resulted in a substantial additional issue during the Master Manual review process. Ultimately, the Missouri River Recovery Program was established to recover these species, mitigate the environmental losses by creating new habitat and restore the ecosystem. At certain times, releases of water from the Missouri River Reservoir system are adjusted to avoid takings of endangered species. There were additional limited revisions to the Master Manual in 2006 related to the criteria for a spring pulse for the benefit of the endangered pallid sturgeon, but later studies have also occurred regarding the effectiveness of the spring pulse. In any event, the three currently designated threatened or endangered species, as well as other environmental issues on the Missouri River, could impact the construction of an intake on the Missouri River and the withdrawal of water from the river.

While operation of the Missouri Mainstem Reservoir System in accordance with the 1944 FCA is important and determines how much water is stored and released from the reservoir system, the diversion criteria assumed during the 1982 Study and this review is not dependent on specific releases from the reservoir system for an aqueduct project. Water is stored and released in accordance with criteria in the Master Manual and Annual Operating Plans adopted by the Corps, which in turn are based the projected and actual water supply, the hydrology of the basin and how to satisfy the project's authorized purposes to the extent possible, within other constraints. In general, except for flood control releases, releases are made to meet certain flow targets during the navigation support season depending on flow conditions and the amount of water in storage the mainstem reservoir system. For example, when a sufficient amount of water is in storage for full service navigation, the target flow at Kansas City is normally 41,000 CFS during the navigation support season. The flow targets and/or length of the normal navigation support season are reduced if sufficient water is not available. Lower target flows are set in the non-navigation/winter months to provide sufficient water for uses other than navigation.

The water management, economic, social and environmental issues associated with the Pick-Sloan Program will likely continue to affect the views of various officials and stakeholders in the basin relationships in the basin well into the future. This could be important if a Kansas aqueduct project is pursued in the future.

## **5.2.4 Interstate Water Issues related to the Missouri River**

### **5.2.4.1 Overview of Interstate Issues**

There are several interstate river compacts between states on major tributaries in the Missouri River Basin, including the Yellowstone River Compact (Wyoming, Montana and North Dakota, the Belle Fourche River Compact (Wyoming and South Dakota), the South Platte River Compact (Colorado and Nebraska), the Republican River Compact (Colorado, Nebraska and Kansas and the Big Blue River Compact (Nebraska and Kansas). In addition, as noted in Section I B 1, the State of Montana has entered into seventeen compacts with various American Indian Tribes and the United States regarding resolution of Federal Reserved Water Rights held by tribes in Montana. However, there is not a basinwide compact, congressional allocation or U.S. Supreme Court Equitable Apportionment that fully allocates the waters of the Missouri River among the states and tribes. Therefore, there is not a specific allocation of how much water the State of Kansas can use from the Missouri River or that otherwise restricts its use from the river. This, however, is a two edged sword. While there is currently no specific basinwide legal restriction on how much water can be appropriated, authorized or used directly from the Missouri River by each State or Tribe, it is clear that each of them is entitled to some share of the river basin's water. On the other hand, there is also no specific protection for current or future uses of Missouri River water by the State of Kansas from the depletive effect of current or future upstream water development. In other words, while the potential physical amount of water that may be available from the Missouri River for use by the aqueduct can be estimated based on the hydrology of the river and making various assumptions, that amount could change in the future if the Missouri River is ever equitably apportioned by Supreme Court decree, Congressional apportionment, or interstate river compact. A compact is a contract between the states and the federal government, a state law in each of the signatory states and a federal law.

What does this mean? It means that no matter what Kansas does **within** our state to grant water rights, reserve water or develop water supplies from the Missouri River, that quantity of water is not protected from use by other states, Indian tribes or the federal government, until an equitable apportionment of the basin takes place within the basin. The United States Supreme Court made this very clear in the

Hinderlider case<sup>26</sup> when it stated, “Whether the apportionment of the water of an interstate stream be made by compact ... the consent of Congress or by a decree of this Court, the apportionment is binding upon the citizens of each State and all water claimants, even where the State had granted water rights before it entered into the compact.”

In other words water rights or water reservations granted by a state to its citizens are protected only against water right claimants in that state under that state’s law. Until an interstate equitable apportionment has taken place, no state can know for sure how much water it has to allocate to its citizens. Therefore, prior to Kansas undertaking a project of the magnitude of an aqueduct project, it would be highly advisable that Kansas seek to have the river equitably apportioned so that Kansas will know for certain what its equitable share of the river is and what it can allocate with certainty.

The 1982 Study assumed that flows in excess of 41,000 CFS during the navigation support season and 15,000 CFS during the non-navigation support season would be available the aqueduct. However, this does not mean that there would not be concerns from other interests regarding a large diversion of water from the Missouri River. Even without an impact to the operation of the Missouri River Mainstem Reservoir system, there may be apprehension by upstream interests about a large diversion’s effect on the future allocation of water in the basin. Downstream, there could be concern about the effect of aqueduct diversions further downstream on the Missouri River and possibly on navigation on the Mississippi River. At times, the Missouri River supplies about 50% of the flow of the Mississippi River at St. Louis and sometimes the two rivers are in drought at different times. During the Master Manual review process, many concerns were voiced regarding the effect of various options on the interests of states, tribes and various stakeholders. In the past, some officials in the lower basin area expressed strong opposition to upstream water development, especially when the water is to be taken out of the basin and upper basin states expressed concerns regarding the amount of water released from storage for navigation. Issues related to how much water is stored in the Mainstem Reservoir System and subsequently released were generally resolved when the Master Water Control Manual was revised by the Corps and reviewed by the Federal Courts, as noted above. However, since then issues have risen regarding operation of the reservoir system during the flood of 2011 and again in 2012 when the basin returned to drought conditions in both the Missouri River Basin and along the Mississippi River.

During the drought of 2012, Senators of states along the Mississippi River made a request to the Corps to release water from Missouri River storage to support barge traffic on the Mississippi River due to low flows caused by drought conditions. There was opposition to this request from the Governors of Montana, North Dakota, South Dakota and Kansas and the congressional delegations of these same states.<sup>27</sup> They argued that releasing water primarily for Mississippi River navigation support would be unlawful, is not authorized by the 1944 FCA, and would cause harm to the other the authorized purposes and the people and business in their states. The Corps declined to release water from the Missouri River storage for navigation support on the Mississippi River, which seems consistent with its historic position. However, the Corps and many others do recognize that there is an incidental benefit to Mississippi River navigation from releases from the Missouri River Mainstem Reservoirs operated in accordance with the Master Water Control Manual. Historically, Kansas officials have also objected to releases of water from tributary reservoirs in Kansas to support navigation on the Missouri River. This position has continued with the current administration.<sup>28</sup>

While past actions by the states are not necessarily indicative of what might happen in the future, it may be informative to look at a past attempts by states to export water from the Missouri River basin. In 1982 the ETSI Pipeline Project contracted with the Secretary of Interior to withdraw up to 20,000 acre feet of water per year from Lake Oahe. Lake Oahe is a mainstem reservoir on the Missouri River in South Dakota with a capacity of 23 million acre feet. ETSI had already obtained a permit from the state to use

the water in a coal slurry pipeline that was to transport coal from Wyoming to the southeast part of the United States. Almost immediately after the contract was signed, the states of Missouri, Iowa and Nebraska sought to enjoin the contract saying that the Secretary of the Interior did not have the authority to contract to sell water from Lake Oahe. These states contended that that authority was limited to the Secretary of the Army. The case was appealed to the United States Supreme Court and a decision was rendered in 1988.<sup>29</sup>

The authorized purposes of Lake Oahe were to allow “the irrigation of 750,000 acres of land in the James River Basin as well as to provide useful storage for flood control, navigation, the development of hydroelectric power and other purposes.” S.Doc. No. 247, 78th Cong., 2d Sess., 3 (1944).

The Supreme Court stated that, “the District Court found that no water from Lake Oahe has ever been used for irrigation, ... and we are unaware of any such plans in the near future. Under these circumstances, the Interior Secretary is not ‘in conformity with the provisions of’ § 8, and therefore has no authority under the Act to withdraw water from Lake Oahe, whether for irrigation or otherwise.”

The Court went on to hold that “The Flood Control Act speaks directly to the dispute in this case, and congressional intent as expressed in the Act indicates clearly that the Interior Secretary may not enter into a contract to withdraw water from an Army reservoir for industrial use without the approval of the Department of the Army. That is ‘the end of the matter.’” *Id.*, at 842, 104 S.Ct., at 2781.

So in 1982 year we have a case from the Missouri River basin where one state desired to export up to 20,000 acre feet of water per year from a reservoir with a capacity of 23 million acre feet which immediately drew the objection of three downstream states. Obviously the quantity of water proposed to be withdrawn was not the real issue, as it amounted to 0.09 of a percent of the reservoirs capacity. And the pipeline was arguably attempting to use water that had never been used because the 750,000 acre irrigation project to be supplied by Lake Oahe had never been built.

Obviously a Kansas aqueduct project presents a proposal that is different from the ETSI Project in significant ways: 1) Kansas is proposing to withdraw the water below all the states in the basin except Missouri and not above three states, 2) in ETSI water was proposed to be withdrawn from storage and the legal authority of the contracting official was in question, whereas an aqueduct project would not be withdrawing water from storage and 3) there are limitations on when water may be diverted from the Missouri River so that ostensibly all other uses of water would be satisfied first. Part of the objection in ETSI came from the fact that all of the water would be used out of the basin. As proposed, a Kansas aqueduct would arguably use only some of the water out of the Missouri River Basin. Even those differences do not guarantee that no other state, tribe or federal agency would not immediately object to an aqueduct project if it proceeds to move forward. In the authors’ opinion, water disputes in the west have in general tended to get more contentious, rather than less.

In 1984 the Denver Water Board sought to build 615 foot high Two Forks Dam at the confluence of the North Fork with the Platte River. The proposed price tag was \$1 billion. It was opposed by the Environmental Defense Fund and 32 environmental groups. In 1989 the Corps announced that it was going to issue a permit for the dam, but on November 24, 1990, EPA Chief Reilly killed the proposed project saying that it violated the Clean Water Act.<sup>30</sup>

As another example, during the 2006-2007 time period, the Bureau published a draft Environmental Impact Statement (DEIS) for comment on the Red River Valley Water Supply Project that proposed to transfer between 50,000 and 100,000 acre feet at a diversion rate of up to 122 CFS from the Missouri River to eastern North Dakota, primarily for municipal use during the next 50 years. Over 270 comments for and against the project were received from a wide range of interests, including North Dakota officials and residents, environmental groups, American Indian Tribes and representatives from

several other states and entities with an interest in the Missouri River Basin. These included objections from the States of Minnesota, Missouri and the Government of Canada, among others. Many of the entities expressing concerns objected to an out of basin division, as well as potential downstream impacts, especially during drought.<sup>31</sup> As a result, the project has not moved forward, but it is possible other solutions may be pursued by North Dakota officials without Federal involvement.

#### **5.2.4.2 Kansas Interstate River Compacts**

Kansas is a party to four interstate river compacts: 1) the Kansas-Nebraska Big Blue River Compact; 2) the Republican River Compact between Kansas, Nebraska and Colorado; 3) the Arkansas River Basin Compact between Kansas and Oklahoma and 4) the Arkansas River Compact between Kansas and Colorado. Each compact is unique in the way it apportions water between the member states, or otherwise restricts the use of water.

##### **5.2.4.2.1 Big Blue Compact**

The Big Blue River Compact<sup>32</sup> includes a provision regarding “Transbasin diversion”<sup>33</sup> that provides that, “In the event of any importation of water into the Big Blue river basin by either state, the state making the importation shall have exclusive use of such imported water, including identifiable return flows therefrom. Neither state shall authorize the exportation from the Big Blue river of water originating within that basin without the approval of the administration.”

This last provision would require the approval of compact members from both Kansas and Nebraska for an export of water from the Big Blue River, including water from Tuttle Creek Reservoir. However, the 1982 Study did not propose such a transfer for an aqueduct project. The route of the aqueduct crosses the Kansas River east of the junction of the Big Blue River and the Kansas River. Of course, the outflows of water from the Big Blue River and Tuttle Creek Reservoir flow downstream to the Kansas River.

##### **5.2.4.2.2 Arkansas River Basin Compact**

The Arkansas River Basin Compact between Kansas and Oklahoma<sup>34</sup> covers the drainage of the Arkansas River Basin below the confluence of the Little Arkansas River and the Arkansas River near Wichita, Kansas and the confluence of the Grand-Neosho River and the Arkansas River near Muskogee, Oklahoma. As a result, this includes the tributary areas in Southeast Kansas that drain to the Arkansas River in Oklahoma, such as the Neosho and Verdigris Rivers, as well as the Salt Fork and Cimarron Rivers in Kansas. However, Article VIII of the Compact states that, “In the event of importation of water to a major subbasin of the Arkansas River Basin from another river basin, or from another major subbasin within the same state, the state making the importation shall have exclusive use of such imported waters.” Article C also states that, “Any reservoir storage capacity which is required for the control and utilization of imported waters shall not be accounted as new conservation storage space” that is otherwise limited by the Compact. Given the route of the aqueduct, it is possible that water could be imported into the Neosho River Basin, which is subject to the storage limits of the compact. However, it would appear that the Compact would allow Kansas the full use of such water, although there may be the need to measure and account for any imports in order to ensure it is all available for Kansas use.

##### **5.2.4.2.3 Republican River Compact**

The Republican River Compact<sup>35</sup> apportions the virgin water supply of the Republican River Basin for beneficial use of the States of Kansas, Nebraska and Colorado. The Compact does not restrict water imported or exported from the basin. However, based on the provisions of the compact and the terms of a litigation settlement reached by the states in 2002, there are provisions in the hydrological model

and accounting procedures used by the compact administration to deal with the use of certain water imported into the basin. While there has been a later dispute on how to treat certain imported water, presumably the concepts agreed upon could be used to determine the effect and proper crediting of any water imported into the Upper Republican River Basin. Article IV also provides, "In addition there is hereby allocated for beneficial consumptive use in Kansas, annually, the entire water supply originating in the Basin downstream from the lowest crossing of the river at the Nebraska-Kansas state line. No separate accounting should be needed if aqueduct water was delivered to Milford Reservoir.

#### **5.2.4.2.4 The Arkansas River Compact**

The Arkansas River Compact<sup>36</sup> only allocates the waters of the Arkansas River "originating above the Kansas-Colorado Stateline, ... excluding waters brought into the Arkansas River Basin from other basins."<sup>37</sup> However, although water imported to the river system is not regulated by the compact, the states have had to historically account for these waters with measurement and hydrologic modeling in order to separate their use from the water allocated by the compact. As a result, there could be monitoring and accounting requirements if water was imported to the affected area in Kansas involving storage in Lake McKinney or diversions by the ditches that divert water from the Arkansas River above Garden City.

### **5.2.5 Kansas Water Appropriation Act**

The Kansas Water Appropriation Act<sup>38</sup> (KWAA), enacted in 1945, is the law that governs the use of water in Kansas. The primary tenet of this law is called the Priority Doctrine and is sometimes referred to as, "First in time is first in right." What this means is that the first person that legally acquires a water right in Kansas has the best right to the use of that source of water supply.

#### **5.2.5.1 Application**

In Kansas no one can use water for any beneficial use, other than domestic use, with applying for and obtaining a permit to appropriate water in accordance with the KWAA,<sup>39</sup> by submitting the application along with the statutorily required filing fee, to the Chief Engineer, , Kansas Department of Agriculture, Division of Water Resources (Chief Engineer).<sup>40</sup> The application is required to contain certain information<sup>41</sup> specified by statute and regulation before it is considered to be in final form.

#### **5.2.5.2 Statutory Criteria for Approval**

Once the application is in final form, the Chief Engineer determines whether the application meets the statutory criteria for approval.<sup>42</sup> These requirements include: a) whether the proposed application will impair a use under an existing water right and b) whether the proposed application will prejudicially and unreasonably affect the public interest.

The requirement that a new application not impair an existing water right means that the new application cannot be approved unless there is sufficient water available to satisfy all existing water rights from that source of water supply and the quantity and rate of water being requested in the new application. The Corps' 1982 Study, assumed that water would not be diverted from the Missouri River unless the target river flow of 41,000 CFS was met at during the navigation support season (eight months) as well as the non-navigation support season target flow of 15,000 CFS (four months), both at Kansas City.<sup>43</sup> No water would be diverted unless all water rights upstream from the White Cloud intake are being satisfied and the target flows are being met downstream at Kansas City. The statute<sup>44</sup> specifies that in order to determine whether a proposed use will impair a use under an existing water right, "impairment shall include the unreasonable increase or decrease of the stream flow."

With the Corps assumptions concerning diversion criteria, it would appear that the proposed diversion of water would not impair existing water rights, but that higher flow levels might need to be set to protect the ability of Kansas to approve reasonable smaller water rights in the future for local use. This would satisfy the requirements of subsection (a) for approving the new application.

Subsection (b) requires that the new application will not “prejudicially and unreasonably affect the public interest.” In determining whether a proposed use will prejudicially and unreasonably affect the public interest, the Chief Engineer is required to take into consideration:

1. established minimum desirable streamflow requirements, of which there are none on the Missouri River, or the streams on which the source and terminal reservoirs are located,<sup>45</sup>
2. the area, safe yield and recharge rate of the appropriate water supply;
3. the priority of existing claims of all persons to use the water of the appropriate water supply;
4. the amount of each claim to use water from the appropriate water supply; and
5. all other matters pertaining to such question.

The Corps assumptions about when diversions would take place should ensure that requirements 2) through 4) should be met. Requirement 5) is more difficult to assess, but it is likely that a number of other concerns may be raised regarding a project of this magnitude. It is possible that any such additional issues would be deferred for consideration during the Water Transfer Act process.

Subsection (c) requires that the application be made in good faith. This usually is interpreted to mean that there is a reasonable likelihood that the project will be built and that the application is not just being filed to block someone else from getting a new appropriation.

Subsection (d) requires that the application be in proper form. The statutes and regulations set forth specific requirements that an application must meet to be in proper form.<sup>46</sup> These requirements include the source of water supply, the maximum rate at which water would be diverted, the total annual quantity of water sought, the location of the point of diversion and the estimated time for completion of the diversion works and the application of water to beneficial use. The applicant may also be required to demonstrate legal access to, or control of, the point of diversion and other facilities.<sup>47</sup>

The proposed beneficial use or uses must be specified as well as a demonstration of the reasonableness<sup>48</sup> of the annual quantity of water and maximum instantaneous rate of diversion being requested. In his case, the annual quantity of water requested and the maximum instantaneous rate of diversion are known, however, the reasonableness of these two factors cannot be judged until the customers for this water are identified and the quantities of water they are requesting are known.

At this stage in the project is not possible to identify the actual proposed place of use as required by statute.<sup>49</sup> If water is being sold from this project, the place of use may be identified as the point at which the water is sold to the end user from the aqueduct or the terminal reservoir. It may be possible that the authorized place of use could be specified as a corridor paralleling the aqueduct and a certain radius or defined area around the terminal reservoir. Theoretically the authorized place of use could be specified as the area within which water could be sold from an aqueduct project.

### **5.2.5.3 Filing Fee**

The filing fee for a new application is approximately \$20 per 100 acre feet.<sup>50</sup> For example, the current study estimates a range of acre feet of water that could be diverted. Assuming hypothetically that the maximum of that range could be available for appropriation, the filing fee for direct use of that quantity would be about \$1 million.

The three points of diversions for this aqueduct would require at least three separate applications to appropriate water for beneficial use.

First, there will need to be an application to appropriate water for beneficial use from the Missouri River. This would be a direct diversion by means of an intake in Missouri River to pump water into the source reservoir. The current study estimates that up to 5 million of acre feet of water may be available for diversion, depending on the type of facilities that are built.

To put this quantity of water in perspective, the average annual quantity of water diverted for consumptive use of water in Kansas during the period 1990 through 2008 was 4,366,180 acre feet. This is at the upper end of the range of quantities of water the aqueduct may be able to divert. If the aqueduct is built and operated, it could potentially provide an average annual quantity of water approximately equal to the amount currently diverted for consumptive water use in Kansas, although that it unlikely that the amount of existing groundwater withdrawals would continue, due to water level declines and because the aqueduct would presumably replace a substantial amount of the existing use from the Ogallala aquifer in western Kansas

A second application to appropriate water will be necessary to divert runoff water from the drainage area being impounded behind the dam of the source reservoir. It does not appear that the source reservoir would inundate part of an Indian Reservation.

A third application to appropriate water would be necessary to store water diverted by the terminal reservoir. Although the application fees for the source and terminal reservoirs might be avoided by building and operating those two reservoirs so that they did not store local runoff, operating those two reservoirs so that they do not affect the timing of the rate and quantity of local runoff below the reservoir is more problematic than just filing the applications and getting them approved.

#### **5.2.5.4 Diversion of Water Out of State**

If some of the water from an aqueduct project were to be used outside the State of Kansas, an application will need to be filed with the Chief Engineer and approved pursuant to K.S.A. 82a-726. That statute requires that the application comply with the; 1) KWAA, the KTA, and all other state laws relating to the diversion, transportation and use of water; 2) the statutes and common law of the state where the water will be used if the water were diverted in that state and 3) not be water apportioned to Kansas pursuant to an interstate compact. The statute further requires that the approval is conditioned so that the approval can be revoked if the water is necessary to protect the public health and safety of the citizens of Kansas.

#### **5.2.5.5 Summary and Discussion of KWAA Issues**

The logical question raised by the issues set forth above concerning using a standard application to appropriate water for beneficial use filed under the KWAA, is whether that type of application will work satisfactorily for this project, or should other alternatives be considered?

The options seem to be: 1) make the project fit under the KWAA, 2) modify the State Water Plan Storage Act<sup>51</sup> so that it can be used to permit this project or 3) have the legislature create an entirely new type of water right.

Although the aquifer project does not exactly fit the definition of a traditional water right, there are many similarities. If aqueduct project applications are filed pursuant to the KWAA, there are certain issues that are a little out of the ordinary. These include: a) an extremely long time to complete the project, b) an extremely long perfection period, c) an indefinite place of use, d) the requirement that the

water right be perfected within a certain definite period of time and e) a rather large filing fee. Similar issues have been dealt with to some extent in processing other applications under the KWAA.

For example, municipal water supply projects have required years to complete construction of the infrastructure, such as points of diversion, water treatment facilities, and distribution systems. As long as a reasonable schedule was proposed by the applicant, that extra time to complete the infrastructure could be accommodated in the permit.

Similarly, municipalities are allowed to have 20 full calendar years after the completion of the diversion works to perfect their water rights. This time period may be extended an additional 20 years for good cause.<sup>52</sup>

Even though all customers will not be known at the time the application is filed, there is a potential solution for that. For example, municipalities and irrigation districts are frequently authorized to divert water within a specified geographic area, such as within the corporate limits of a municipality plus a one half mile corridor surrounding the corporate boundary.<sup>53</sup> Irrigation districts are authorized to divert water within the corporate boundaries of the district. In the case of both municipalities and irrigation districts, water is not delivered to all persons or entities within those boundaries.

For the KWAA, each permit issued by the Chief Engineer specifies that the application must be perfected within a specified number of years by applying water to beneficial use in accordance with the terms, conditions, and limitations of the permit. This should be doable under the terms of a permit, especially if a reasonably long time period is allowed by the Chief Engineer for perfecting the water right.

Finally, as mentioned above, there is the matter of a rather large filing fee, which could be up to about \$1 million, that must be filed with the application for a permit to appropriate water before it can be accepted for filing and establish a priority date. Once the application is accepted for filing, it can be processed and additional information acquired so that a decision can be made as to whether it can be approved, and if so under whatever terms, conditions and limitations, etc. This would require the entity constructing the project to have the \$one million at a very early stage the aquifer project. Whether that money is available or not at that time would depend largely how an Aquifer Project is financed.

### **5.2.6 Water Reservation Right Alternative**

A second alternative may be a potential alteration of the State Water Plan Storage Act<sup>54</sup>, to allow the filing of a water reservation right for an aqueduct project. This act currently authorizes the director of the KWO to apply for water reservation rights in federal reservoirs or other water storage space controlled by the state of Kansas. Once the application is filed with the Chief Engineer and accepted, the water reservation right is deemed to be perfected as of the date of the original filing.<sup>55</sup>

Use of the State Water Plan Storage Act for an aqueduct project would raise several issues. First, in the act's current form, the director of the KWO could not file for a water reservation right to divert water from the Missouri River because the Missouri River is not storage space controlled by the state of Kansas. Secondly, the current act would put the KWO in the position of being the seller of the water under the Water Marketing Program. These are issues that would have to be addressed if a choice was made to use this act.

The advantage to using this act, is that there is no filing fee or perfection requirement. The water right is automatically perfected as of the date of filing. No water use within the terms, conditions and limitations of the Water Reservation Right is necessary. The customers, the places of use, and how shortages of water would be shared, would then be determined by the contracts between the water users and the KWO.

It should also be noted that Professor Peck pointed out that nowhere is it currently provided in statute that water reservation rights are “real property” as are water rights.<sup>56</sup> Although this is an important difference, it is not clear what ramifications this may have if a water reservation right is used to implement an aqueduct project. The KWO could consider forming a task force to look at recommending amendments to the State Water Plan Storage Act concerning water reservation rights.

There is another example of the use of the water reservation concept in the Missouri River Basin. In 1982, the State of Montana developed a strategy aimed at protecting its share of water from the Missouri River from downstream uses and to insure water availability for Montana’s future needs<sup>57</sup>. This effort was apparently precipitated in part due to the High Plains Study being conducted at that time that was examining the potential for diverting and transporting Missouri River water to several portions of the High Plains area, including the 1982 Study aqueduct route being evaluated at this time. Since then, Montana has established a number of “reservations” to reserve water for future use.<sup>58</sup> It appears this approach purports to reserve water for specific uses projected to be needed in the future for cities, irrigation projects, instream flow and other uses. More detailed review and analysis may be needed to determine what legal standing these “reservations” or other such reservation rights would have at the time of an actual conflict in water use between the States or Tribes in the basin, especially if no actual water is being made of the water. This could be an issue if a case was filed to establish a U.S. Supreme Court Equitable Apportionment in the Missouri River Basin, or perhaps could be a consideration if one of the other methods to determine a basinwide allocation was being undertaken, as referred to above.

### **5.2.7 Kansas Water Transfer Act**

Legal issues related to obtaining water at the source include considerations related to acquisition of water and protection for the area of origin. While the KWAA is the foundation of Kansas water law, and provides for consideration of whether or not water is available for appropriation from any given source of water, or whether the point of diversion, place of use or purpose of use can be changed under an existing water right, the Water Transfer Act (WTA)<sup>59</sup> provides for an extra-ordinary process to determine whether significant amounts of water should be allowed to be moved or “transferred” more than a defined distance from one area to another.

According to the WTA, a water transfer “means the diversion and transportation of water in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use outside a 35-mile radius from the point of diversion of such water”. The WTA defines various terms like point of diversion and point of use, so that one can determine whether a proposal qualifies as a Water transfer can be determined. However, given the amount of water and distance involved in the 1982 study, there is little doubt that such a project would qualify as a water transfer (transfer) under current Kansas law.

The WTA sets up a process for review of proposed transfers and defines a number of criteria or factors that must be considered before such a transfer can be approved. The law sets up a “water transfer hearing panel” to implement the provisions of the Act. The panel consists of the Chief Engineer, as chairperson, the Secretary of the Kansas Department of Health and Environment (or Director of the Division of Environment, if designated by the Secretary), and the Director of the KWO. The process requires a hearing to be held in accordance with the provisions of the Kansas Administrative Procedures Act, except as specifically provided by the WTA. The hearing is to be conducted by a hearing officer, also known as a presiding officer, who is to be an independent person knowledgeable in water law, water issues and hearing procedures. After consideration of the record from the hearing, the presiding officer shall render an “initial order” approving or disapproving the proposed transfer, including findings of fact, relating to each of the factors to be considered in KSA 82a-1502 (c) of the WTA; the proposed transfer may be approved for a smaller amount of water than requested on such terms, conditions and

limitations as the presiding officer deems necessary for the protection of the public interest of the state as a whole. The water transfer panel shall be deemed the agency head for purposes of the Kansas Administrative Procedures Act and shall review all initial orders of the presiding officer.

The Chief Engineer has adopted rules and regulations<sup>60</sup> related to the water transfer process, setting forth information needed for a water transfer application. Among other things, an application shall not be considered complete unless one of the following has been approved, contingent upon receiving a permit to transfer water: A permit to appropriate water from the source, a change to an existing water right or a contract for purchase of water from state controlled storage in a federal reservoir. In short, compliance with the KWAA or the Kansas Water Marketing Act to acquire water from the source is necessary before applying for a transfer.

Under the criteria in KSA 82a-1502, a transfer shall not be made, unless approved pursuant to the provisions of the WTA. In essence, a transfer is not to be approved which would reduce the amount of water required to meet present and any reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken unless it is determined that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer. An extensive list of factors are considered as outlined in the statute and discussed more below.

The WTA indicates that no transfer shall be approved if it would impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water. The WTA also requires that the applicant has adopted and implemented conservation plans and practices that are consistent with state guidelines, that such plans and practices have been in effect for at least one year before the application is filed, and that they include a rate structure for municipal use that encourages efficient use of water that will result in wise use and responsible conservation and management of water by the system.

To determine whether the benefits of the transfer outweigh the benefits for not approving the transfer<sup>61</sup>, the WTA requires the presiding officer to consider nine separate factors, generally described herein: 1) any current beneficial use of the water to be transferred, including minimum desirable streamflow requirements; 2) any reasonably foreseeable future beneficial use of the water; 3) the economic, environmental, public health and welfare and other impacts of approving or denying the proposed transfer; 4) alternate sources of water available to the applicant and present or future users for any beneficial use; 5) measures taken to preserve the quality and remediate any contamination of water currently available for use by the applicant; 6) information regarding the proposed plan of design, construction and operation of the facilities related to the transfer; 7) the effectiveness of conservation plans and practices of the applicant or any other entities to be supplied water; 8) the conservation plans and practices implemented by persons protesting or potentially affected by the transfer which must be consistent with KWO guidelines and 9) any applicable management program, standards, policies and rules and regulations of a groundwater management district.

One of the issues that may be raised is the extent of the impact of an aqueduct project on local tax revenues and potential offsets, including any reduction in local property taxes.

While it is not possible to know what facts and information would be presented during a hearing on a proposed transfer related to an aqueduct project being studied, it should be anticipated that the applicant would need to address each of the nine factors outlined above at a formal quasi-judicial type hearing. In addition, any persons that intervene in the hearing process would need to address any factors of concern to them, as the presiding officer will need to consider and evaluate evidence related to these factors. After the presiding officer renders an initial order, the water transfer panel must

review the initial order, based on the record of the hearing and issue a final order. Finally, the final order may be appealed in accordance with the Kansas Judicial Review Act.<sup>62</sup>

### 5.2.8 Corps Required Permits

Most activities involving work in the waters of the United States require authorization of the Corps, through one or both of the following Federal laws: Section 404 of the Clean Water Act,<sup>63</sup> and Section 10 of the Rivers and Harbors Act of 1889<sup>64</sup>. In particular, the lock and dam on the Missouri River would likely be considered a major permit issue because of its potential to change the flows of the river and potentially affect the Bank Stabilization and Navigation Project (BSNP). The BSNP was designed to make the Missouri River a free flowing river with a self-souring navigation channel, through channelization and bank protection along much of the river.

Section 10 regulates any work or structure in, over, or under navigable waters of the United States. This includes such items as boat docks, power lines, excavation, filling, etc. In Kansas, this law applies only to the Missouri River, the Kansas River and the Arkansas River. Section 10 approval would be required for the lock and dam and intake facilities on the Missouri River for an aqueduct project. In addition, approval would be required for the crossing of the Kansas River.

“The **navigational servitude**, which exists by virtue of the Commerce Clause in **navigable** streams, gives rise to an authority in the Government to assure that such streams retain their capacity to serve as continuous highways for the purpose of **navigation** in interstate commerce.”<sup>65</sup>

The Missouri River is a navigable river. The federal government, through the Commerce Clause, may regulate construction and withdrawal of water which impairs that navigability. This power is exercised by the Corps under Section 10 of the Rivers and Harbors Act. Anything an aqueduct project would do to impair navigability of a navigable river would likely be challenged by the federal government.

However, the 1944 FCA also included what is known as the ‘O’Mahoney–Millikin Amendment<sup>66</sup>, that appears to subordinate navigation to most beneficial consumptive uses in the states totally or partial west of the 98<sup>th</sup> Meridian, which includes Kansas. While this provision would presumably override the navigation servitude issue on the Missouri River, that legal issue is unresolved at this time.

Section 404 regulates the discharge of dredged or fill material in all waters of the United States, including rivers, streams, lakes and wetlands. It appears a Section 404 permit would be required for the Missouri River lock and dam and intake facilities, the Kansas River crossing and construction of both the source and terminal reservoirs. It appears aqueduct would mostly be located along a ridge line. However, if any smaller streams or wetlands would be encountered, Section 404 approval may be needed, if the “Waters of the United States” are involved. There has been controversy and litigation in recent years regarding the definition of the “Waters of the United States”, and proposed changes to the rules of the EPA and Corps are pending. Presumably, this issue would be resolved before any construction would take place.

The process for consideration of such permits can be extensive, especially due to the potentially extensive environmental review required. It is anticipated that the dredge and fill, and other construction associated with each of the four components of an aqueduct project mentioned above would require detailed analysis, review and public comment, including compliance with the National Environmental Policy Act (NEPA).<sup>67</sup> There may also be other smaller streams or water courses, as well as wetlands, also affected by the project that would require various kinds of Section 404 approval or

permits, ranging from General Permits to more extensive permits, depending on the specific circumstances.

### **5.2.9 Obstructions in Streams Act and Levee Law**

Kansas law<sup>68</sup> requires that any person or entity, except the federal governments, who desires to construct a dam, or change or diminish the course, current, or cross-section of any designated stream within Kansas shall, prior to construction, obtain the prior written consent for permit of the Chief Engineer.

Another state law<sup>69</sup>, the Kansas levee law provides that it is illegal to, “construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream” without first obtaining the approval of plans by the Chief Engineer.

In other words, the construction or modification of any levee, such as to protect the pump station on the Missouri River, or any construction that has the effect of a levee, such as a road, would require a permit to be issued by the Chief Engineer prior to construction. In order to receive that permit an application must be filed and the statutorily required filing fee be paid. A similar permit may be necessary for the aqueduct crossing of the Kansas River, or any other rivers and streams that may be encountered throughout the course of the aqueduct. Often levees are constructed and maintained by Drainage Districts or Levee Districts that can be organized under Kansas law.

The Obstructions in Streams Act<sup>70</sup> will require a number of different permits for an aqueduct project and will require payment of minor application fees.<sup>71</sup> The first permit required under this statute would be for the construction and maintenance of the lock and dam, the intake and pump station on the Missouri River. It is likely that the construction of this and maintenance of this intake would alter course, current, or cross-section of the Missouri River, at least during the construction phase.

Unless they are constructed by the federal government, two other permits that would be required will be those required for the construction of the dams of the source reservoir and the terminal reservoir. Construction of the dams must meet the requirements of state law and regulations.<sup>72</sup> In terms of conservation storage, the source and terminal reservoirs would be two of the largest reservoirs ever constructed in Kansas. Since it is assumed that these would not be federally constructed and operated, approval would be needed from the Chief Engineer pursuant to the Obstructions in Streams Act. One of the primary purposes of the act is the protection of life and property. These dams would need to be constructed to meet the dam safety requirements of the law and associated regulations. Because of the size and location, both reservoirs would be considered High Hazard dams, since a breach would inundate significant areas where loss of life could occur, should the dam fail. In particular, portions of the Missouri River valley and floodplain would be inundated by the failure of the source reservoir. The terminal reservoir is located in a rural area, but its size could result in flooding as far away as the upper part of the Walnut Creek drainage.

Permits would also be required under this act any time the construction of the aqueduct alters the course, current or cross-section of the stream subject to the jurisdiction of this act. This requirement applies whether the alteration of the stream channel is only temporary or permanent. For example, the proposed aqueduct alignment would cross the bed and banks of the Kansas River West of Topeka Kansas. If the construction of the inverted siphon would alter the stream channel either during or after construction, a permit would be necessary from the Chief Engineer.

The Water Projects Environmental Coordination Act<sup>73</sup> requires that prior to the issuance of a permit, the plans for the Missouri River intake, the crossing of the Kansas River and any other streams subject to the jurisdiction of the Chief Engineer, the source reservoir dam, and the terminal reservoir dam would be subject to review under that act by the environmental review agencies which are: a) Kansas Department of Wildlife, Parks and Tourism; b) the Kansas Forest Service; c) the State Biological Survey, d) the Kansas Department of Health and Environment; e) the State Historical Society, f) the Kansas Department of Agriculture Division of Conservation and g) the State Corporation Commission.<sup>74</sup> The environmental review agencies shall review the “proposed project for environmental effects. The Chief Engineer is required to “consider their comments in determining whether to approve or issue a permit for such project. The Chief Engineer may condition the approval of more permits for the project in a manner to address the environmental concerns of the environmental review agencies.” The environmental review agencies are required to consider, “the beneficial and adverse environmental effects of a proposed project of water quality, fish and wildlife, forest and natural vegetation, historic, cultural, recreational, aesthetic, agricultural and other natural resources;...”<sup>75</sup>

### **5.2.10 State of Kansas Owned Property**

In addition to the permits required by the obstructions in streams act, permission is also required from the state of Kansas to construct or alter property owned by the State of Kansas. The State of Kansas owns the bed and banks of any navigable river up to the ordinary high water mark.<sup>76</sup> The Missouri River, the Kansas River and the Arkansas River are the only navigable streams in Kansas.<sup>77</sup> In order to get permission to construct facilities on state-owned land, a statute must be passed by the Kansas legislature and signed by the governor authorizing the project to be built on state owned land. For example, this was done when the city of Topeka constructed a weir across the Kansas River to funnel water into its intake.<sup>78</sup> Obviously a certain amount of lead time is necessary to get the statute passed and an agreement signed. This permission could be granted in the act creating the entity to build and operate an aqueduct project as was done when the KTA was created.

By interstate compact<sup>79</sup> Kansas owns the bed and banks of the Missouri River out to the centerline. Therefore, if Kansas is constructing diversion works or withdrawing water from the Missouri River on its half of the river, it is doing so on Kansas property. Any lock and dam constructed would by necessity located in both Kansas and Missouri.

## **5.3 Legal Issues in Transporting, and Dropping Off, Water Along the Way**

### **5.3.1 Transportation of Water in Kansas Streams**

Should an aqueduct project be designed to transport water by putting it into a natural stream in Kansas, conveying it downstream and picking it up and putting it back in the aqueduct, a Kansas statute<sup>80</sup> allows a person to do that outside the priority system. In other words, water could be released from the aqueduct, allowed to run down the stream channel, and re-diverted downstream and put back in the aqueduct or stored in a reservoir. During the time the water is in the stream channel, the Chief Engineer can protect that water from diversion by other water users, but the owner of that water would suffer losses from evaporation and seepage while it is in the stream channel.

It should be noted however that this statute is found under the old irrigation law, so while its language is broad, it could be argued that only water for irrigation could be transported in this manner. If the legislature amended to the KWAA to include this provision in it, that would remove any doubt that this provision applied to all types of beneficial uses.

### 5.3.2 Storing Water in Existing Lakes and Reservoirs along the Aqueduct Route

While not necessarily envisioned in the 1982 Study, there is a potential opportunity to store water provided by an aqueduct project, involving some of the twenty-four existing Federal reservoirs, seventeen (17) operated by the Corps and seven (7) operated by the Bureau. In addition, there are other potential uses along the aqueduct route that may be able to benefit from a supplemental water supply. An aqueduct is proposed to run along a ridge. For much of its route, it is the ridge separating the Smoky Hill River drainage in the Kansas River Basin and the Wet Walnut Creek drainage in Arkansas River Basin. Existing reservoirs on either side of this ridge may be able to receive water from the aqueduct by gravity flow and/or with limited construction.

In northeast Kansas, not far from the beginning of the proposed aqueduct, it crosses the upper end of the Delaware River. This would seem to be an opportunity to provide water to the river and Perry Reservoir if needed. Tuttle Creek and Milford Reservoirs are located northwest of the aqueduct route. While a spur could be constructed to one or both of them, it may not be justified or necessary. The aqueduct crosses the Kansas River east of Manhattan. If an outflow to the Kansas River was constructed at the crossing, aqueduct water could be provided to the Kansas River to supplement its flow, and provide water for the Kansas River Water Assurance District. This could result in less stored water being released from Tuttle Creek and/or Milford Reservoirs for use further down the Kansas River. This would allow more water for the upper portion of the Kansas River and stabilization of reservoir storage during drought. Water for the Jeffrey Energy Center could be provided from either or both sources.

Two Federal projects, Kanopolis Reservoir operated by the Corps and Cedar Bluff Reservoir operated by the Bureau, are on the Smoky Hill River, located just north of the aqueduct route.

At Kanopolis Reservoir, the potential exists to provide water to enhance storage in the reservoir, especially during drought, and potentially provide supplemental water for other uses in the area. For example, the City of Salina relies on the Smoky Hill River, and its alluvium for its water supply, as do irrigators below the lake. There are periods of water shortages by these users. In addition, if supplemented by water from an aqueduct project, Kanopolis Reservoir could serve as a potential storage reservoir for various water needs in the adjacent Little Arkansas River Basin, such as public water supply for area communities. The upper reaches of the Little Arkansas River are near the aqueduct route, and it could serve as a potential source of recharge for the Equus Beds Aquifer.

The aqueduct could also be a source for Salina, McPherson, Wichita and other communities in South Central Kansas, including members of the Public Wholesale Water Supply District No. 10, that was organized a number of years ago.

The Cedar Bluff Reservoir project originally included an irrigation function, storage for the City of Russell and water for a National Fish Hatchery. However, no water was available for irrigation after 1978 and the irrigation district disbanded in 1994 due to reduced inflow and a shortage of water. The project was reformulated by Congress, and in place of the irrigation function, a "joint use pool", operated by KWO and the Kansas Department of Wildlife and Parks, now includes storage for recreation and artificial recharge. Cedar Bluff Reservoir is still short of water and the project would apparently benefit from more water for recreation and perhaps other uses. The Smoky Hill River valley below the reservoir is also in an Intensive Groundwater Use Control Area (IGUCA).<sup>81</sup> It includes significant water restrictions, and the area is normally short of water to meet existing domestic, public water supply, irrigation and other needs. If all the technical, legal and economic issues were resolved, and more water was available for storage at Cedar Bluff Reservoir, this area would likely benefit from increased releases to the water short stream system below the reservoir. This is where the well fields for the City of Hays and a rural water district are located, and water also continues to be used for domestic, irrigation and other uses

below the reservoir. Potential water needs for small towns and other uses in the vicinity of Cedar Bluff Reservoir may also exist.

In addition, the Wet Walnut Creek and its alluvial valley are just to the south of the ridgeline in central Kansas, and it would not seem difficult to get water to this stream system. It is also in an IGUCA.<sup>82</sup> Due to water shortages, this alluvial valley has some of the most restrictive limits on pumping in the state, so additional water added to this system could provide a larger supply of water for various purposes, including, municipal, industrial, irrigation and stockwatering uses, as well as recreation use, since water added to the Wet Walnut Creek system could also be allowed to flow downstream and be diverted into Cheyenne Bottoms. It would also only be a short distance to the City of Great Bend well field. Water quality impacts would need to be considered if the water was used for Cheyenne Bottoms, but by adding water to the upper end of the Wet Walnut Creek, the water quality impacts of using Missouri River water may be less of a concern.

Most of the other Federal reservoirs in Kansas operated by the Corps are located some distance from the aqueduct route, or may not have unused storage capacity on a normal basis, although all portions of Kansas experience drought at times, and serious multi-year drought, on occasion. However, several existing Corps Reservoirs are located in river basins where the upper end of the drainage is not far from the aqueduct route, especially in southeast Kansas. In particular, the upper end of the Neosho River Basin is adjacent to the ridge upon which the aqueduct would potentially run. This could provide access for water to flow by gravity to Council Grove Reservoir on the upper end of the Neosho River and Marion Reservoir on the Cottonwood River, both of which flow downstream to John Redmond Reservoir, and on through Southeast Kansas.

If any of these existing Corps reservoirs were to be used to store water from an aqueduct project, there are many different issues to consider. The reservoirs are generally located further east in the State than the Bureau reservoirs, and are generally not short of water except during periods of drought so there is normally less vacant space available, but that varies by specific project. In addition, the State of Kansas owns Conservation Water Supply Storage in most of these reservoirs and they are a part of either the Kansas Water Marketing Program or Water Assurance Program, administered by KWO to help meet the long terms needs of municipal and industrial users. Water is sold to these users through the Water Marketing Program using long term contracts. KWO has also entered into contracts with Water Assurance Districts in several river basins. Water Reservation Rights are held by the KWO on behalf of the State for these reservoirs. As a result, it is uncertain whether a change in operation of these projects is practical, although it is possible that supplemental water supply could be provided by an aqueduct project to enhance the amount of water available to help meet long term municipal and industrial demand from these reservoirs.

It may be possible to increase the utilization of federal reservoirs in other ways, especially in light of lost storage space over time due to sedimentation. For example, it may be possible in some cases to increase storage capacity in a given reservoir by raising the conservation pool level, or possibly the dam itself. In addition, it is also possible to change the authorized purposes. Each of these potential changes would require extensive study and review pursuant to NEPA. The Federal operating agency would need to be funded to conduct the studies and congressional approval would be required to change the project's authorized purposes or to change the operation of the project beyond the authority of the operating Federal agency. The studies and NEPA process should be expected to be quite extensive, and would need to consider impacts to existing authorized purposes and users, as well as the technical, environmental, economic and social impacts of the proposal.

### 5.3.3 Water Quality Issues

Water quality implications of a Kansas aqueduct project, and potential impacts to streams along the aqueduct corridor, is an issue to be evaluated herein at a general level, and in more detail in Chapter 6 Environmental Constraints, by others. Generally speaking, any time water from one source is introduced to another stream or water body, there can be a positive or negative water quality impact. For example, a technical analyses would be needed to determine whether Missouri River water contains more or less nitrates, phosphorus or pesticides than any given stream, reservoir or water body in Kansas that would receive aqueduct water. The Missouri River has historically been referred to as the “Big Muddy”, apparently due to the sediment load carried by the river, and it may carry more sediment than most streams in Kansas. However, like other smaller scale water bodies, considerable change has occurred in the Missouri River Basin over the years, due to soil and water conservation practices, sediment accumulation in reservoirs, point and non-point source pollution control programs, and other practices that normally reduce the sediment load and contaminates to streams. Like other surface water sources, with treatment, the Missouri River is used as a major source of municipal water supply throughout the basin, including large cities and water districts along the Missouri River in Kansas, such as Water District No. 1 of Johnson County and the Board of Public Utilities in Wyandotte County. Nevertheless, a water quality concern could exist if untreated Missouri River water were directly introduced by an aqueduct into other rivers, streams or reservoirs of higher quality. The existing quality of water in the receiving body, and its uses, would need to be evaluated to determine if there would be stream degradation, impacts to water quality standards or TMDL issues. Invasive species, such as the Zebra Mussel and Asian carp, is another issue to be evaluated if Missouri River water is introduced to different water bodies that have not been infected with such species.

Most point source discharges to a water body are required to be permitted through the National Pollution Discharge Elimination System (NPDES), pursuant to the Clean Water Act.<sup>83</sup> The administration of this program and issuance of permits has been delegated to many of the states by the Environmental Protection Agency (EPA), including the Kansas Department of Health and Environment. In some cases, this can be a complex process. Whether such permits are needed for “water transfers” from one water body to another has been litigated in the Federal courts. Since the Federal Circuit courts have reached different conclusions in different areas of the country, this issue may ultimately be resolved by the U.S. Supreme Court. Non-point source pollution control has historically been handled by the states through voluntary incentive-based programs, such as land treatment for erosion control (terraces, waterways, residue management, etc) and riparian and wetland protection. In Kansas, cost share programs for non-point source pollution control are administered by the Kansas Department of Agriculture, Division of Conservation.

In addition, several water bodies in Kansas have been designated as “Outstanding National Resource Waters” and impacts to these waters would need to be assessed. At this time there have been no rivers or streams designated in Kansas as wild and scenic. In some cases, there might be additional water system treatment requirements for water sources used for public water supply. With some potential exceptions, the sediment load in Missouri River water may be higher than some of the receiving water bodies. However, some sediment may drop out and accumulate in the “source water” reservoir and the “terminal” reservoir. The remaining sediment load in Missouri River aqueduct water would certainly be higher than the sediment load in the groundwater currently used by some of the potential users of aqueduct water, but that does not mean it is unsuitable for irrigation and some other uses without treatment. If Missouri River aqueduct water was used to supplement streamflow, experience with reservoir releases to streams and canal operations indicates that water containing sediment would

cause less “head cutting” and erosion than clear water released into a stream. This has been directly observed below reservoirs and in earth-lined canal systems in Kansas, Colorado and other locations.

#### **5.3.4 Construction across Existing Roads, Railroads, Pipelines and Power Lines**

As the aqueduct is constructed, the construction will cross or interrupt service to local roads, highways, railroads, pipelines, power lines and other utilities. In addition to this construction cost, there will be various legal issues with the owners and operators of this infrastructure.

Based on a general view of the maps produced by the KWO, it is estimated that this aqueduct would cross approximately 33 existing highways, 13 existing railroads, 14 existing oil and gas pipelines, 14 existing power lines. This would mean that at least 74 easements would have to be purchased or condemned in order to construct the aqueduct. This would mean having to deal with counties, townships, the State of Kansas, utilities, railroads and other entities to secure these easements.

#### **5.3.5 Local Ability to Cross the Aqueduct**

The aqueduct would be about 360 miles long and about 280 feet wide. Undoubtedly, it would be fenced off on both sides therefore effectively prohibiting any traffic, including local traffic, from crossing the aqueduct.

To put this in perspective, the Kansas Turnpike is approximately 236 miles long and about 300 feet wide. Throughout its length there are 22 interchanges and 129 other overpasses for a total of 151 ways to cross the turnpike in 236 miles. 236 miles divided by 151 equals one location to cross the Turnpike every 1.6 miles. For the aqueduct to have equivalent access to cross the aqueduct, there would have to be 225 crossings constructed over the aqueduct. (360 miles divided by 1.6 equals 225 crossings.) Whether that is a sufficient density of crossing locations for the aqueduct remains to be seen. It should be expected that protests from local residents and landowners would be voiced if they are unable to cross the aqueduct so that they can go to town, or get to the other portion of their fields on the other side of the aqueduct. It is fairly easy to envision that if the aqueduct is 360 miles long that it might well cross approximately 360 section line roads or highways. Every one of those routes that is blocked, either temporarily or permanently, is likely to evoke protests.

The bottom line is that an aqueduct project would have to construct approximately 225, three hundred foot long bridges, or other type of crossings, to provide access to cross the aqueduct similar to the access provided across the Kansas Turnpike.

### **5.4 Legal Issues at the Destination**

#### **5.4.1 Issues Related to the Distribution of Water from the Terminal Reservoir**

The 1982 Study did not deal with the distribution of water from the terminal reservoir or along the route. It is presumed that some form of distribution system would be developed from the terminal reservoir to potential water users including the irrigated areas of the Ogallala aquifer in western Kansas. In all areas of the Ogallala aquifer, this might include conduits or canals to provide water directly to the irrigated land.

Artificial recharge projects in various areas of the Ogallala aquifer may also be a possibility. Aquifer recharge, storage and recovery projects have been operated in other areas, such as the Equus Beds, but there are technical, legal and administrative issues to be resolved. The Chief Engineer has adopted regulations<sup>84</sup> concerning aquifer storage and recovery. Any proposed artificial recharge project shall meet the requirements of these regulations and include: 1) meeting the Kansas Department of Health

and Environment's water quality standards for injected water, including Article 46 of their regulations, 2) identifying the horizontal and vertical extent of the basin storage area, 3) getting a methodology for accounting for water stored and withdrawn from an aquifer approved by the Chief Engineer, 4) preventing impairment of existing water rights in the basin and 5) providing an annual accounting report to the Chief Engineer. The regulations also provide for coordination between the Chief Engineer and any local groundwater management district concerning the recharge project.

There are various ways water could be recharged into the aquifers of western Kansas, such as creating artificial recharge basins, putting water in dry stream beds, or injecting into wells. Each method will have its own set of legal, physical and other issues, such as who would inject the water and who would pay the costs?

For example, in southwest Kansas, it is possible aqueduct water could also be provided to the irrigation distribution systems that have historically diverted from the Arkansas River, but are often short of water. If so, arrangements would need to be worked out with the mutual shareholder irrigation companies that operate the ditches. Water could be used to enhance the flow of the Arkansas River and/or the Cimarron River and provide recharge to the alluvial valleys and enhance riverine habitat.

In West Central Kansas, there are limited stream systems, but Ladder Creek could also provide a way to provide recharge to the aquifer and/or provide water to Scott County State Lake.

In Northwest Kansas, in addition to the primary distribution of aqueduct water to the irrigated areas of the Ogallala aquifer, there are also a number of stream systems that originate in the aquifer area. These streams have fairly extensive alluvial valleys that provide some water for existing irrigated land or other uses through alluvial groundwater or surface water, but there is normally limited streamflow. Several of these streams also have federal reservoirs located on them. Those reservoirs include irrigation projects and other functions.

These include Keith Sebelius Reservoir on the Prairie Dog Creek, Kirwin Reservoir on the North Fork of the Solomon River and Webster Reservoirs on the South Fork of the Solomon River, all operated by the Bureau. These projects are normally short of water to meet their current authorized purposes and are generally not full. These projects are 60 to 80 miles from the aqueduct route and it may or may not be feasible to provide potential supplemental water supply to some or all of these projects. However, if a canal or conduit were to deliver aqueduct water to Northwest Kansas for irrigation, it may be possible to either tie in some or all of these projects, or to release water into the upper end of some or all of the relevant stream systems to replace depleted base flow or increase streamflow. This could enhance recharge to the Upper Republican and/or Solomon River Basin alluvial valleys and increase inflow to these Bureau reservoirs. The primary authorized purpose for these projects is flood control and irrigation, although they are multi-purpose projects that also include recreation use, and in some cases, public water supply. Irrigation districts still operate below Keith Sebelius, Kirwin and Webster Reservoirs when water is available, with each district serving between 5,000 and 11,500 acres of land. Recreation use would also normally be expected to benefit from more water in storage.

Water rights for storage and direct use for these Bureau projects are held by irrigation districts, as well as rural water districts, cities or other local governmental entities with storage contracts. The irrigation districts below Keith Sebelius, Kirwin and Webster Reservoirs have long term contracts to repay their pro-rata share of the cost of constructing and operating the reservoir and irrigation distribution system by the Federal government through the Bureau.

If any involvement with these federal projects was deemed feasible, any potential issues related to the authorized purposes of the Federal reservoirs, water rights, existing contracts, as well as any new contracts for water, would need to be resolved. A change in authorized purposes for a Federal project

generally requires congressional approval. Water rights are held by existing irrigation districts or other local governmental entities for each of these Bureau reservoirs, except Cedar Bluff, which now includes storage held by the State of Kansas. The relationship to any new uses would need to be resolved. Under current law, it is possible that a supplemental storage water right to support new purposes for the reservoir, and any new direct uses from the reservoir, could be considered if a new source of water is available from the aqueduct for these projects. Among other things, it would need to be determined that the new use of water was reasonable and the operation would not impair existing water rights or prejudicially and unreasonably affect the public interest. Presumably, detailed operations plans and agreements would need to be developed to sort out how the projects would be operated to satisfy existing uses and water rights, as well as any new uses. Potentially, with State approval, existing water rights could be changed to meet new or different uses, or an existing project and its water rights could possibly be acquired by an aqueduct project sponsor. However, this could be complicated, and would likely require approval by any existing irrigation district, or other entity with a current federal contract, the federal operating agency and the State of Kansas.

#### **5.4.2 Other Issues Related to the Distribution of Water along the Aqueduct and from the Terminal Reservoir**

Should limitations be imposed on the type of customers that may purchase water from an aqueduct project? For example, at the present time certain water supply projects are limited to serving water only for irrigation projects. Some of water supply projects on to serving water only for municipal and industrial uses. Should an aqueduct project be allowed only to serve certain types of water uses or should it be allowed to sell water to purchasers for any type of beneficial use authorized by the KWAA? That is a policy decision that will have to be made if the entity to build and operate an aqueduct project is authorized.

To break this issue down into finer categories, if water is authorized to be delivered for irrigation purposes, should any limitations be placed on the quantity of water that may be purchased by irrigation users? For example, should water be allowed to be used only on land that currently is authorized to be irrigated pursuant to the provisions of the KWAA? Should water only be allowed to be used on land that is currently not authorized to be irrigated? Or should water be allowed to be purchased for use on either type of land?

When water is allowed to be used for irrigation purposes, should acreage limitations be imposed which would limit the quantity of water any individual user would be allowed to purchase? For example, should any irrigation user be limited to irrigate only a certain amount of land or should they be allowed to purchase unlimited quantities of water as long as they can afford it?

Should water sold for municipal and industrial purposes be limited in quantity in any way? For example, if a city currently has an adequate supply of water authorized pursuant to the K.WAA, should it be allowed to enter into contracts to purchase an unlimited quantity of water if they can afford it?

Another major issue is how, and how far, an aqueduct project would deliver water away from the aqueduct or the terminal reservoir?

It should be noted that while delivering millions of acre feet of water from the source reservoir to the terminal reservoir near Utica Kansas, would be a monumental feat, that water still must be distributed to the various municipal, industrial and agricultural users in western Kansas. Depending on where the water would be utilized, there still would be significant miles of aqueduct and/or pipeline to be constructed, and additional pump stations needed to lift that water to actual users. By the time the water has been delivered to the terminal reservoir, it will have been pushed uphill approximately 1,700

feet and moved west approximately 360 miles. Just picking a few cities in western Kansas as representative of areas where water may be desired, the water still may need to be pushed uphill another 650 feet and over 100 miles further west.<sup>85</sup>

In other words, in order to deliver the water from the terminal reservoir near Utica to various locations throughout Western Kansas, the elevation and the distance would be increased by approximately 1/3 more than was covered by the aqueduct getting from the source reservoir to the terminal reservoir. That is not insignificant in terms of capital cost, operation and maintenance and legal issues concerned with right away, condemnation, land taken from production, environmental issues and so forth.

Would an aqueduct project bear the cost of delivery away from the terminal reservoir and the aqueduct itself, or would that be the purchaser's obligation? To some extent the answer to that question seems to be dependent on where an aqueduct project would need to deliver water in order to have enough customers to make the project financially feasible. Depending on how the water would be delivered from the aqueduct and the terminal reservoir to customers, additional issues would be raised concerning purchase of right-of-way or easements for the pipelines or canals that would be used to deliver water.

Of course, all along the route of the aqueduct and in the vicinity of the source reservoir and the terminal reservoir, issues will arise concerning the impacts on fish and wildlife and their habitats. If it could be guaranteed that none of the water pumped from the Missouri River would enter existing lakes and streams, that guarantee would eliminate the danger of contaminants or invasive species entering local watersheds. On the other hand, it is unlikely that guarantee could be made as there would always be dangers of breaches in the aqueduct or in end users allowing their water to escape from the project. Water could be release through flooding damage, earthquakes, or local vandalism. Therefore there would be a risk of invasive species being released into local water supplies as the aqueduct water is transported across the state.

Potentially, another method that would ensure that invasive species were not released into other water supplies would be that the water would be treated at some point before it leaves the source reservoir so that any invasive species were killed or removed from the water supply. One such species that could be introduced in the Kansas water supplies if untreated water was allowed to escape would be the Asian carp that have become so prolific in Missouri and Mississippi Rivers.

Further the aqueduct would provide a significant physical barrier to non-flying wildlife from crossing from one side of the aqueduct to the other. To the extent that this interferes with wildlife's access to the habitat and migration routes, this could be a problem. Accommodations might have to be made in some locations for crossings specifically devoted to wildlife.

On the other hand if the water were sufficiently treated or filtered to allowed to be introduced into local habitats, it might serve the purpose of enhancing wildlife habitat and food supplies if aqueduct water could be used to enhance or create habitat for migratory birds.

## **5.5 Institutional Issues**

### **5.5.1 What type of entity is necessary to build and operate an aqueduct project?**

As pointed out by Professor John Peck in his 1982 article<sup>86</sup>, the Kansas Constitution was amended in 1957 and provides in part: "The state shall never be a party in carrying on any work of internal improvement except that: ... (2) it may be a party to flood control works and works for the conservation or development of water resources. ..."<sup>87</sup>

Peck further notes that the State Water Resource Planning Act<sup>88</sup> provides that the KWO, upon approval of the Kansas Water Authority, “may include in the state water plan recommendations for the inclusion at state expense of any conservation storage features for water supply in any proposed or authorized or constructed water development project of the federal government of any conservation features for water supply that in the opinion of the office will be needed within the state in the future to achieve the purposes of this act.” At the present time there is no proposal that the federal government might be involved in the construction of an aqueduct project, other than the need to have the Corps construct the lock and dam on the Missouri River.

A determination may also need to be made as to whether an aqueduct project is compatible with the state water plan long range goals, such as sound management of surface and groundwater supplies, efficient and economical distribution of those supplies, sound coordination of the development of the water resources of the state, and protection of the public interest.<sup>89</sup>

In order to consider what type of entity would be appropriate to construct and manage an aqueduct project, the section authors looked at several examples of entities that might have similar powers or functions. The first entity looked at is the Central Arizona Project (CAP). In 1969, President Lyndon B. Johnson signed a bill approving construction of the CAP. Later, a local entity was formed to repay the federal government for certain costs of construction when the system was complete. In 1971, the Central Arizona Water Conservation District (CAWCD) was created to provide a means for Arizona to repay the federal government for the reimbursable costs of construction. It manages and operates the CAP. The CAWCD is a municipal corporation and is governed by a 15-member popularly-elected Board of Directors.

In the case of a Kansas aqueduct project at this time it is being assumed that the federal government will not be building the intake, the reservoirs and the aqueduct. Because the CAWCD did not construct the project, obviously major differences exist between the CAP and any Kansas entity.

A second type of entity that might be used as a model to create a new entity to build, maintain and operate an aqueduct project, is the Kansas Turnpike Authority (KTA). The KTA was created by the Kansas legislature on April 7, 1953.<sup>90</sup> The Authority acts through a board of five members, one of whom is elected chairman by the other members. Two members are appointed by the Governor of Kansas for four-year terms, two members serve by reason of their legislative positions - one is Chairman of the Kansas Senate Committee on Transportation and the other is a member of the House Transportation Committee, appointed by the Speaker of the House. The fifth member is the Secretary of the Kansas Department of Transportation. The latter three serve as members of the Authority for the duration of their state terms. On July 1, 2013, in accordance with HB 2234, the KDOT Secretary also became the Turnpike's Director.<sup>91</sup>

The KTA has constructed 236 miles of toll road and 22 interchanges through the state of Kansas. The average width of the land acquired to construct and maintain the Turnpike is 300 feet. The KTA has acquired at least 8,581 acres of right-of-way [5,280 feet × 236 miles × 300 feet wide divided by 43,560 square feet in an acre = 8,581 acres] in Kansas through purchase or condemnation. Although an aqueduct would be longer in length, many of the Turnpike construction, easements and maintenance issues are analogous to an aqueduct project.

The KTA was created by statute and granted authority to:

- a. determine the locations of highway projects authorized by this act subject to the approval of the secretary of transportation,
- b. determine their design and the materials of construction and construct, maintain, repair and operate the same;

- c. issue revenue bonds payable solely from the tolls and revenues derived therefrom;
- d. fix and collect tolls;
- e. establish rules and regulations for the use of the highway project;
- f. acquire hold and dispose of real and personal property;
- g. determine locations of ingress and egress;
- h. enter into contracts and agreements necessary or incidental;
- i. employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents has been may be necessary in its judgment; and
- j. receive federal grants for construction of the project, and do all acts and things necessary or convenient to carry out the powers expressly granted in this act.<sup>92</sup>

The KTA and its authorized agents and employees were authorized to enter on to any lands, waters and premises in the state for the purposes of making such surveys, soundings, drilling and examinations as they may be necessary. The KTA is also authorized to enter into contracts with landowners for the construction and maintenance of underpasses and bridges. The State consented to the use of all lands owned by it, including lands lying and water, which are deemed necessary for the construction or operation of the project. The KTA is authorized to purchase lands, structures, property, rights, rights of way, franchises, easements and other interest in lands including lands lying underwater in riparian rights, which are located within the state.

The KTA is also authorized and empowered to acquire by condemnation any lands, property, rights, rights of way, franchises, easements and other property including public lands parks and playgrounds reservations, highways, or parkways, or parts thereof.

The KTA is authorized to issue highway revenue bonds within certain limits for the purpose of paying cost of any project; and the principal and interest of such bonds was payable solely from tolls and other revenues.

Finally the KTA is not required to pay any taxes or assessments upon any highway project or any property acquired or used under the provisions of this act and the income therefrom, including any profit, and all bonds issued under the provisions of the act and all sales, transfers and income of or from such bond shall at all times be free from taxation within the state.<sup>93</sup>

One option would be to have Kansas legislature create by statute a Kansas Aqueduct Project Authority. It would need to have similar powers to those listed above authorized to the KTA. The largest issue would seem to be not which powers are granted to such Authority, but whether an aqueduct project would be able to generate sufficient revenue from the sale of water to retire the revenue bonds. Apparently the KTA was initially financed by the issuance of \$160 million in revenue bonds (\$2.97 billion in 2011 dollars) in 1959. A few years later some federal highway assistance money became available to help with the project. It is being assumed for the purpose of the study the federal government would probably not be making any federal grants to assist with the construction of this project. Even if a Kansas Aqueduct Project Authority were able to generate sufficient funds to cover the operation and maintenance of this project, would it generate sufficient revenue to also offset the construction of the project?

One issue raised by Peck<sup>94</sup> was condemnation or eminent domain powers available under existing Kansas law. All of those issues could be resolved by giving a Kansas Aqueduct Project Authority sufficient eminent domain power to construct the project.

In Peck's 1982 article<sup>95</sup> he has a laundry list of existing kinds of entities that could be considered to build and operate an aqueduct project, such as irrigation districts and public wholesale water supply districts. He concludes, however, that none of them were really designed to deal with a project on this massive scale, and we agree. However, an aqueduct project could be designed so that one entity builds and operates the aqueduct and reservoirs, but that it in effect wholesales water to existing entities in Kansas, such as municipalities, irrigation districts, public wholesale water supply districts and groundwater management districts to distribute the water from the aqueduct and terminal reservoir.

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<sup>1</sup> U.S. Army Corps of Engineers. 2006. *Missouri River Master Water Control Manual, 2006*. <http://www.nwd-mr.usace.army.mil/rcc/reports/mmanual/MasterManual.pdf>.

<sup>2</sup> 33 U.S.C. 701 et seq.

<sup>3</sup> 33 U.S.C. Sections 544b and 603a

<sup>4</sup> *Winters v. United States*, 207 U.S. 564 (1908)

<sup>5</sup> *Arizona v. California*, 373 U.S. 546 (1963)

<sup>6</sup> See e.g. *Colville Confederate Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981)

<sup>7</sup> *Colville*

<sup>8</sup> 43 U.S.C. section 666

<sup>9</sup> [http://www.dnrc.mt.gov/wrd/water\\_mgmt/water\\_reservations/missouri\\_riv\\_basin/default.asp](http://www.dnrc.mt.gov/wrd/water_mgmt/water_reservations/missouri_riv_basin/default.asp)

<sup>10</sup> 25 U.S.C. 3001 et seq.

<sup>11</sup> 16 U.S.C. 470 et seq.

<sup>12</sup> 16 U.S.C. 4701 et seq.

<sup>13</sup> K.S.A. 75-2715 et seq.

<sup>14</sup> 33 U.S.C. 701 et seq.

<sup>15</sup> 33 U.S.C. 701 et seq.

<sup>16</sup> Missouri River Association of States and Tribes. 2009. *White Paper* adopted March 24, 2009.

<sup>17</sup> U.S. Department of the Interior, Bureau of Reclamation, Great Plains Region. 1998. *An Overview of the Pick-Sloan Missouri River Basin Program*.

<sup>18</sup> Leland E. Rolfs. 2009. *Background Report on the Federal Acts and Court Case That Have Affected the Development of the Missouri River Basin*. March 17.

<sup>19</sup> 33 U.S.C. § 701-1(b)

<sup>20</sup> *Ibid.*

<sup>21</sup> U.S. Department of the Interior, Bureau of Reclamation, Great Plains Region. 1998. *An Overview of the Pick-Sloan Missouri River Basin Program*.

<sup>22</sup> U.S. Army Corps of Engineers. 2006. *Missouri River Master Water Control Manual*. <http://www.nwd-mr.usace.army.mil/rcc/reports/mmanual/MasterManual.pdf>.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Leland E. Rolfs. 2009. *Background Report on the Federal Acts and Court Case That Have Affected the Development of the Missouri River Basin*. March 17.

<sup>26</sup> *Hinderlider v. La Plata River and Cherry Creek Ditch Co.* 304 U.S. 92 (1938)

<sup>27</sup> Letter dated November 28, 2012, to President Barack Obama from the Governor of Montana, and letter dated November 30, 2012, to President Obama, et al., from the governors of North Dakota, South Dakota, and Kansas and the congressional delegations of Montana, North Dakota, South Dakota, and Kansas.

<sup>28</sup> Letter dated November 26, 2012, to Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works) from Governor Sam Brownback.

<sup>29</sup> *ETSI Pipeline Project v. Missouri et al.*, 484 U.S. 495 (1988)

- <sup>30</sup> Susan Green. 2000. *Ex-EPA Chief Proud he Killed Two Fork*, Denver Post, October 28.
- <sup>31</sup> Red River Valley Water Supply Project. <http://rrvwsp.com>.
- <sup>32</sup> K.S.A. 82a-529
- <sup>33</sup> Article V. Section 5.4
- <sup>34</sup> K.S.A. 82a-528
- <sup>35</sup> K.S.A. 82a-518
- <sup>36</sup> K.S.A. 82a-520
- <sup>37</sup> K.S.A. 82a-520, Article III (B)
- <sup>38</sup> K.S.A. 82a.701 et seq.
- <sup>39</sup> K.S.A 82a-711
- <sup>40</sup> K.S.A. 82a-708a
- <sup>41</sup> K.S.A. 82a-709 and Kansas Administrative Regulation 5-3-1b
- <sup>42</sup> If the proposed appropriation:
- a) will not impair a use under an existing water right,
  - b) will not prejudicially and unreasonably affect the public interest,
  - c) is made in good faith,
  - d) is in proper form, and
  - e) contemplates the use of water for beneficial purposes, the chief engineer **shall** approve all such applications
- <sup>43</sup> U.S. Army Corp of Engineers, Six-State High Plains-Ogallala Aquifer Regional Resources Study, 1982
- <sup>44</sup> K.S.A. 82a – 711 (c)
- <sup>45</sup> K.S.A. 82a – 703c
- <sup>46</sup> K.S.A. 82a-709 and 710; K.A.R. 5-3-1b
- <sup>47</sup> K.A.R. 5-3-3a
- <sup>48</sup> K.S.A.82a-707(e)
- <sup>49</sup> K.S.A. 82a-709 (h)
- <sup>50</sup> K.S.A.82a-708a
- <sup>51</sup> K.S.A. 82a-1301 et seq.
- <sup>52</sup> K.A.R. 5-8-6
- <sup>53</sup> K.A.R. 5-1-1(mm)
- <sup>54</sup> K.S.A.82a-1301 et seq.
- <sup>55</sup> K.S.A. 82a-1303 and 1304.
- <sup>56</sup> Peck, John C. 1981. Legal Constraints on Diverting Water from Eastern Kansas to Western Kansas. *Kansas Law Review*.
- After the 1982 Study was released, John C. Peck, a water law professor at the University of Kansas, published a paper in the *Kansas Law Review* on “Legal Constraints on Diverting Water from Eastern Kansas to Western Kansas.” Peck reviewed relevant Kansas water law at the time and a series of legal and institutional problems. He focused on two potential sources of water: Tuttle Creek reservoir on the Big Blue River and the Missouri River. While the Peck article serves as a valuable reference and this paper uses the same general format as the Peck article, this paper’s focus is primarily on the Missouri River as a source.
- <sup>57</sup> Montana Department of Natural Resources and Conservation, Water Resources Division. 1982. *A Water Protection Strategy for Montana, Missouri River Basin, Summary Report*. September.
- <sup>58</sup> [http://www.dnrc.mt.gov/wrd/water\\_mgmt/water\\_reservations/missouri\\_riv\\_basin/default.asp](http://www.dnrc.mt.gov/wrd/water_mgmt/water_reservations/missouri_riv_basin/default.asp)
- <sup>59</sup> K.S.A. 82a-1501 et seq.
- <sup>60</sup> K.A.R. 5-50-1 et seq.
- <sup>61</sup> K.S.A. 82a-1502

- <sup>62</sup> K.S.A. 82a-1505(a); Kansas Judicial Review Act at K.S.A. 77-601 et seq.
- <sup>63</sup> 33 U.S.C. Section 1251 et seq.
- <sup>64</sup> 33 U.S.C. 403
- <sup>65</sup> Kaiser Aetna v. United States, 444 U.S. 164, 177 (1979)
- <sup>66</sup> 33 U.S.C. § 701-1(b)
- <sup>67</sup> 42 U.S.C. Section 4321 et seq.
- <sup>68</sup> Obstructions in Streams Act, KSA 82a – 301 through 328.
- <sup>69</sup> K.S.A 24-126
- <sup>70</sup> K.S.A. 82a-301 et seq.
- <sup>71</sup> K.S.A. 82a-302
- <sup>72</sup> See K.S.A. 82a – 301 et seq. and KAR 5 – 40 – 1 et seq.
- <sup>73</sup> K.S.A. 82a-325 et seq.
- <sup>74</sup> K.S.A. 82a-326
- <sup>75</sup> K.S.A. 82a-327(b)(1)
- <sup>76</sup> See State v. Akers, 92 Kan. 169, 140 P.637, 649 (1914): “... the Mississippi river and its navigable tributaries were constituted public highways, and recognized as navigable streams in the fullest and broadest sense” (emphasis supplied). “The Kansas river being a navigable stream within this state its bed and banks to **ordinary high-water mark** belong to the state and the title of the riparian proprietor extends only to that line” (emphasis supplied). Siler v. Dreyer, 183 Kan. 419 (1958).
- <sup>77</sup> State ex rel. Meek v. Hays, 246 Kan. 99, 103 (1990)
- <sup>78</sup> K.S.A. 82a-711
- 82a-215. Easement for construction of diversion works along Kansas river for city of Topeka; conditions; authorization.** (a) The secretary of state is hereby authorized and directed to grant an easement to the city of Topeka, Kansas, on a tract of land owned by the state of Kansas along the south and north banks of the Kansas river described as follows....
- (c) The city of Topeka, Kansas, is hereby authorized to acquire the easement described in subsection (a) and to use such easement for the purpose of locating, constructing, maintaining and operating diversion works for the appropriation of water and to assume full responsibility for such use and hold the state of Kansas harmless therefor.
- History:** L. 1987, ch. 399, § 1; L. 1987, ch. 329, § 1; May 28
- <sup>79</sup> K.S.A. 82a-521 through 524
- <sup>80</sup> K.S.A. 42-303 "**Right to conduct water along natural channels and withdraw same.** Any person may conduct water into and along any of the natural streams or channels of the state. And may withdraw all such waters so by him turned into such channel at any point desired, without regard to prior appropriations of water from said stream. Due allowance being made for evaporation and seepage. History: L. 1891, ch. 133, art. 1section 3; May 20; R.S.1923, 42-303.
- <sup>81</sup> K.S.A. 82a-1036 through 1040
- <sup>82</sup> An order was issued by the Chief Engineer on January 29, 1992, designating this area as an Intensive Groundwater Use Control Area.
- <sup>83</sup> <http://water.epa.gov/polwaste/npdes/>
- <sup>84</sup> K.A.R. 5-12-1 et seq.
- <sup>85</sup> The following table shows that there are still significant distances and elevations to be overcome:

City	Elevation	El. above Utica	Miles from Utica
Colby	3160	542	95
Elkhart	3500	882	181
Garden City	2850	232	103

Goodland	3683	1065	130
Liberal	2835	217	144
Leota	3310	692	73
Sublette	2920	302	114
Mt Sunflower	4039	1421	153
Tribune	3543	925	95
Ulysses	3071	453	134
Utica	2618	0	0

Just taking an average elevation of these cities, for water to be delivered in this general area, it would have to be pumped uphill approximately another 653 feet. The range in these elevations above Utica is from a low of 217 at Liberal to a high of 1421 feet at the top of Mount Sunflower.

There are also significant delivery distances from Utica, Kansas to the cities listed above. Those distances range from a minimum distance to Leota of 73 miles to a maximum distance of 153 miles to the top of Mount Sunflower. The average distance is 122 miles.

<sup>86</sup> Peck at 164

<sup>87</sup> Kansas Constitution, Article 11, Section 9

<sup>88</sup> K.S.A. 82a-910

<sup>89</sup> K.S.A. 82a-927

<sup>90</sup> K.S.A. 68-2001 et seq.

<sup>91</sup> KTA website

<sup>92</sup> K.S.A. 68-2095

<sup>93</sup> K.S.A. 68-2097; 68-2098; 68-20,104; 68-20,110

<sup>94</sup> Peck at 203

<sup>95</sup> Peck at 211

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## Chapter 6: Environmental Considerations

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A large-scale infrastructure construction project such as the aqueduct would require a comprehensive environmental review and extensive permitting process and mitigation. The following is not intended to identify all environmental laws and regulations that may be triggered during the construction of the aqueduct. However, major federal and state environmental laws and regulations were evaluated to determine the constraints that would be encountered if a project of this scope is ever undertaken. Other potentially relevant environmental laws and regulations can be found in Appendix 4.

## **6.1 Clean Water Act (CWA)**

### **6.1.1 Permits to Discharge Dredged or Fill Material**

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The basic premise of the program is to ensure that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded.

Proposed activities, such as fill for development or infrastructure projects, are regulated through a permit review process which is jointly administered by the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA). The Corps is responsible for the day-to-day administration and permit review and EPA provides program oversight. The permit review process includes a public interest review in which the benefits of the project are weighed against reasonably foreseeable detriments. Impacts to wetlands, fish and wildlife, water quality, historic and cultural resources, property ownership, public safety and floodplain management are all considered during the permit review.<sup>1</sup>

A 404 permit would be required for an aqueduct lock and dam and intake facilities on the Missouri River, the Kansas River crossing, impacts to other streams and wetlands along the route and construction of the source and terminal reservoirs.

### **6.1.2 Compensatory Mitigation**

For every authorized discharge of dredged or fill material, the adverse impacts to streams, wetlands and other aquatic resources must be avoided and minimized to the extent practicable. If there are unavoidable impacts, compensatory mitigation is required to offset the loss of habitat and aquatic resource functions. The Corps is responsible for determining the appropriate form and amount of mitigation required.<sup>2</sup>

There are three mechanisms by which mitigation can be accomplished. The first is permittee-responsible mitigation in which the permittee performs the mitigation after the permit is issued and is responsible for the implementation and success of the project. Second, mitigation banking allows permittees to purchase credits from a mitigation bank, which has projects that have been set aside to compensate for future impacts. The value of the banking credits is determined by quantifying the aquatic functions or acres restored. With this mechanism, the bank sponsor is ultimately responsible for the success of the project. Finally, there is in-lieu fee mitigation in which a permittee provides funds to an in-lieu-fee sponsor much like mitigation banking. In-lieu fee sponsors typically pool funds from multiple projects and are responsible for the implementation and success of the mitigation project.

Compensatory mitigation for impacts to streams in Kansas is evaluated under the Stream Mitigation Guidance (SMG). The guidance document, which was developed jointly with multiple federal and state agencies, outlines the methods by which the aquatic functions of streams are quantified and entered into the "Mitigation Equation." The mitigation equation establishes that the proposed mitigation credits

must be equal to or greater than the mitigation debits. Debits are quantified based on existing quality of the stream, as well as the length and nature of the impact.

Stream and wetland mitigation costs for a water transfer system such as this would be substantial. While it is difficult to compare such a project to other projects that have been completed recently in Kansas due to sheer difference in scale, recent projects were evaluated to determine the relative cost of mitigation to the total project cost. The Kansas Water Office and the City of Horton, Kansas completed a project as part of the mitigation required for dredging disposal near Mission Lake in 2010. The project impacted 2,220 linear feet of stream habitat and required 11,100 mitigation credits. The credits were purchased using an in-lie fee sponsor, at the cost of \$29 per credit. The total cost for mitigation was \$334,776 and the total project construction cost was \$612,000. In this case, mitigation represented just over half of the cost of construction. Recent flood detention projects that were completed in Kansas used in-lie fee mitigation and credits were purchased for \$40 per credit for stream impacts and \$75,000 per acre of wetland impacted. In the case of the flood detention projects, total mitigation costs actually exceeded the cost of construction.

To fulfill the compensatory mitigation requirements for a project this size would require considerable financial resources. One possible way to reduce the cost and maximize the efficiency of completing mitigation requirements would be to manage the projects through an entity developed to oversee the construction and operation of the aqueduct.

### **6.1.3 State Water Quality Regulations and Environmental Coordination**

Under Section 401 of the CWA, prior to issuance of a 404 permit a statement certifying the activity is not likely to violate State Water Quality Standards must be obtained. Section 401 Water Quality Certifications are issued by the Kansas Department of Health and Environment (KDHE) as part of the 404 permit process and the state stream modification and floodplain fill permitting process.

Permits for stream obstructions, floodplain fills and dam or levee construction must be obtained from the Kansas Department of Agriculture, Division of Water Resources (DWR). The Water Projects Coordination Act (K.S.A. 82a-325 to 327) requires an environmental review of Kansas water projects to ensure that the project is in compliance with other state regulations. Other permits that may be required prior to issuance of a permit by DWR, include but are not limited to, a permit to appropriate water from the DWR Water Appropriation Program, construction permits from county and local government, Kansas Department of Health and Environment (KDHE) permits for storm water run-off and threatened and endangered species permits from the Department of Kansas Wildlife Parks and Tourism (KDWPT).

### **6.1.4 National Pollutant Discharge Elimination System (NPDES) Water Transfer Rule**

Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) program to regulate point source discharges of pollutants into waters of the United States. An NPDES permit sets specific discharge limits for point sources discharging pollutants into waters of the United States and establishes monitoring and reporting requirements, as well as special conditions.<sup>3</sup> NPDES permits would be required for the construction activities associated with building the water transfer system; however, it is unclear whether or not an NPDES permit would be required for the actual transfer of water.

In 2008, EPA enacted the National Pollutant Discharge Elimination System (NPDES) Water Transfer Rule. The rule was issued to clarify that water transfers are not subject to regulation under the NPDES program. The rule defined water transfers as activities that convey or connect waters of the U.S. without

subjecting the water to intervening industrial, municipal, or commercial use. EPA's legal interpretation of the CWA concluded that, "Congress generally did not intend to subject water transfers to the NPDES program and that there is no 'addition' of a pollutant which would trigger the requirement to obtain an NPDES permit because the pollutants are already in the waters being transferred and are not being added from the outside world."<sup>4</sup>

The Water Transfer Rule was remanded to EPA for reevaluation in March of 2014. A ruling by the U.S. District Court for the Southern District of New York found that transferring water into a different water body risks introducing foreign species into non-native waters and disturbing the natural sediment, nutrient and other balances in the recipient water body. A blanket exemption from NPDES permitting requirements therefore runs afoul of the prohibition in the CWA against the discharge of pollutants without a permit.<sup>5</sup> EPA, 11 western states and the South Florida Water Management District announced in May of 2014 that they plan to appeal the district court ruling.<sup>6</sup>

At the time of this study update, it is uncertain what the regulatory requirements would be for addressing water quality criteria for a water transfer. If the EPA appeals the ruling of the District Court and the Water Transfer Rule is revalidated, it would exempt the aqueduct from the NPDES regulations. This would leave water quality regulation authority to the state. If the Water Transfer Rule remains invalidated, then NPDES permits may be required for the transfer.

## **6.2 Rivers and Harbors Appropriation Act of 1899**

Obstructions to navigable waters of the U.S are regulated under Sections 9 and 10 of the Rivers and Harbors Appropriation Act of 1899. Section 9 requires Congressional approval to construct dams, dikes, bridges, or causeways in a navigable waterway. In waterways that are only navigable within a state's boundary, the state legislature has authority to approve such projects, although plans must be submitted to and be approved by the Corps Chief of Engineers and by the Secretary of the Army before construction begins. If the waterway is navigable in more than one state, Congress must approve such projects.<sup>7</sup> Section 10 gives the Corps exclusive authority to approve dredge and filling operations and smaller structures such as wharves, booms and bulkheads.<sup>8</sup>

For an aqueduct intake, Section 9 will require Congressional approval for construction of the lock and dam structure on the Missouri River, and will also require state legislation for the Kansas River crossing. Permits will need to be obtained under Section 10 of the Rivers and Harbors Act for all activities affecting the Missouri River, Kansas River and the Arkansas River.

Section 14 of the Rivers and Harbors Act (commonly referred to as "Section 408") requires a permit from the Corps for the alteration, occupation or use of a Corps civil works project. The 408 permit also requires a review to ensure that the activity will not be injurious to the public interest and will not impair the usefulness of the Corps project.

## **6.3 National Environmental Policy Act**

The National Environmental Policy Act (NEPA) was signed into law in 1970 and requires federal agencies to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. The NEPA requirements would be triggered at the time a permit application was made under Section 404 of the CWA and if any federal funds were used to construct the project.

The NEPA process consists of an evaluation of the environmental effects of a federal action including its alternatives. There are three levels of analysis: categorical exclusion (CATEX) determination; preparation

of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS).<sup>9</sup> A large project such as the aqueduct would require an EIS and the project in its entirety would be reviewed to assess the cumulative impacts.

An EIS is a full disclosure document that includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders. The EIS process is completed in the following ordered steps: Notice of Intent (NOI), public scoping, draft EIS, final EIS and record of decision (ROD).

The NEPA process incorporates the requirements of other major environmental and historic preservation laws. The process provides the vehicle for multi-agency coordination and public participation.

#### **6.4 Endangered Species Act**

The Endangered Species Act of 1973 (ESA) was passed to protect and recover imperiled species and the ecosystems they inhabit. The U.S. Fish and Wildlife Service (USFWS) administers the program at the federal level. Under federal law, species are listed as either endangered or threatened. Endangered species are those that are in danger of extinction throughout all or a significant portion of their range. Threatened species are those that are likely to become endangered in the near future.<sup>10</sup>

Federal agencies must cooperate with the USFWS to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. These consultations can result in a biological opinion (BO) issued by the USFWS. The ESA also requires the designation of critical habitat for listed species. Federal agencies are required to avoid destruction or adverse modification of designated critical habitat.

The Kansas Nongame and Endangered Species Conservation Act of 1975 authorized the Kansas Department of Wildlife, Parks and Tourism (KDWPT) to define and list endangered and threatened species. All federally listed species are protected under state law as well as additional species listed as threatened or endangered at the state level. Kansas law defines another classification for Species in Need of Conservation (SINC). SINC species are those that are likely to become threatened or endangered in the future.

In Kansas there are approximately 60 species listed as threatened or endangered. Another 69 species are considered species in need of conservation. Critical habitat designations have been finalized in Kansas for the Whooping Crane (*Grus Americana*) and the Arkansas River shiner (*Notropis girardi*). Critical habitat designations have been proposed for the Rabbitsfoot Mussel (*Quadrula cylindriva*) and the Neosho Mucket Mussel (*Lampsilis rafinesqueana*).

Under state regulations, anytime a project will affect wildlife habitats such as streams, wetlands or other poorly drained areas, riparian areas, native woodland, or native prairie, the project must be reviewed for potential use by threatened or endangered species. Some of the listed species have restricted habitat requirements and are extremely vulnerable to changes at smaller scales. If the project will impact threatened or endangered (T&E) species or their critical habitats, a permit is required from the KDWPT before construction begins. In most cases, it will be necessary to place special conditions on a permit whereby the permit holder will be required to incorporate specific mitigation measures designed to significantly reduce or eliminate a project's adverse impacts to the protected species.<sup>11</sup>

An initial review of data from the Kansas Biological Survey identified three threatened species known to inhabit areas along the 1982 aqueduct route: the Plains Minnow (*Hybognathus placitus*) near the source reservoir and along the aqueduct route, the Arkansas Darter (*Etheostoma cragini*) near the terminal

reservoir and the Lesser Prairie Chicken (*Tympanuchus pallidicinctus*) near the terminal reservoir and along the aqueduct route. Several SINC species are also found in the project area. For example, Greater Prairie Chickens are found in areas along the aqueduct route and near the terminal reservoir. The USFWS is currently considering listing the Northern Long-eared Bat (*Myotis septentrionalis*) as endangered, which would require consideration when clearing trees greater than 3 inches in diameter. The areas that are designated as critical habitat for the Whooping Crane and Arkansas River Shiner are not in the vicinity of the project.<sup>12</sup>

In addition to ESA regulations in Kansas, the construction of a lock and dam structure would require an evaluation of T&E species on the Missouri River. In 2000, the USFWS issued a BO (amended in 2003) that found that actions proposed by the Corps would jeopardize the continued existence of the Pallid Sturgeon. The BO recommended recovery actions that are carried out by the Missouri River Recovery Program, such as creating sandbar habitat and shallow water habitat, as well as propagation efforts.<sup>13</sup> Any future project on the Missouri River will likely require an extensive review of its impacts on these three federally listed species.

## **6.5 Invasive Species**

Invasive species are nonnative plants or animals that when introduced can cause significant changes to an ecosystem resulting in economic, ecological and human health impacts. For example the zebra mussel (*Dreissena polymorpha*), native to Europe, was introduced to the Great Lakes through the ballast water of ships and has now become widespread throughout the Midwestern U.S.. Zebra mussels cause major problems to water quality, public water supply and electric generation, recreation and human health. Executive Order 13112 was signed in 1999 and calls on federal agencies to work to prevent and control the introduction and spread of invasive species.<sup>14</sup>

The risk of transporting invasive species from the Missouri River to other receiving water bodies in addition to potential impacts to the infrastructural components of the transfer system must be evaluated if a project is completed in the future.

## **6.6 Farmland Protection Policy Act**

Congress enacted the Farmland Protection Policy Act (FPPA) as a subtitle to the 1981 Farm Bill. The FPPA is intended to minimize the extent to which federal activities contribute to the unnecessary and irreversible conversion of agricultural land to nonagricultural uses. The FPPA requires federal agencies to examine the impact of their programs before they approve an activity that would convert farmland.<sup>15</sup>

Prime farmland is defined as land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops and is available for these uses. Unique farmland is defined as land other than prime farmland that is used for the production of specific high value food and fiber crops. Both have the special combination of soil quality, location, growing season and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods.<sup>16</sup>

The 1982 Study evaluated a source reservoir of 13,000 acres and a terminal reservoir of 25,000 acres. The canal system would use approximately 37,700 acres of land. An evaluation of the projects impacts on any prime or unique farmlands will be required as part of the EIS.

## **6.7 Historic Preservation**

### **6.7.1 National Historic Preservation Act**

The National Historic Preservation Act was enacted in 1966 for the purpose of protecting the nation's historical and archaeological sites. Section 106 of the act requires federal agencies to identify and assess the effects of its actions on historic properties and cultural resources. The Section 106 review is completed in coordination with State and Tribal Historic Preservation Officers (SHPO/THPO). The Section 106 review is incorporated into the NEPA process in which cultural resources must also be addressed.<sup>17</sup>

An initial assessment of known historic sites and buildings on the historic register found approximately 40 sites in the vicinity of the 1982 route.

### **6.7.2 Native American Historic and Cultural Resources**

The Native American Graves Protection and Repatriation Act (NAGPRA) became law in 1990 to provide greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects and items of cultural patrimony on Federal and tribal lands. NAGPRA requires that Indian tribes or Native Hawaiian organizations be consulted whenever archeological investigations encounter, or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on Federal or tribal lands. Excavation or removal of any such items also must be done under procedures required by the Archaeological Resources Protection Act.<sup>18</sup>

The Iowa Tribe of Kansas and Nebraska, Kickapoo Tribe of Indians in Kansas, Prairie Band Potawatomie Nation and the Sac and Fox Nation all have reserves in northeast Kansas. While the components of the 1982 aqueduct system do not cross present-day tribal lands, they have the potential to impact historic cultural resources of the tribes. The landholdings of each of these tribes was once much larger than the boundaries that exist today. Additionally, many other tribes once lived in Kansas and any disturbance of their cultural resources on would require handling in accordance with relevant federal and state laws.

### **6.7.3 Kansas Preservation Laws**

The Kansas SHPO office reviews approximately 3,000 projects per year for potential effects on the state's historic and archeological resources. The Kansas Preservation Act determines effects on listed historic properties. The Kansas Antiquities Act recognizes the need to conserve significant archeological remains. The Unmarked Burial Sites Preservation Act protects unmarked burials, human remains and associated objects.<sup>19</sup>

As part of the development of the EIS, identification of all historic properties, including archeological sites must be identified and adverse impacts resolved through consultation with the SHPO, potentially the Advisory Council on Historic Preservation (ACHP) and appropriate and interested Native American tribes and other interested parties.

## **6.8 Sedimentation Issues**

There are several issues related to sediment that must be addressed with a project such as the aqueduct. First, the Missouri River is sediment deficient as a result of the large dams upstream of the site considered for the lock and dam and intake structure. There are numerous efforts to increase the sediment in the Missouri River to balance the drastic reduction from historic loads that occurred

because of the mainstem dams. In addition, the Missouri River Bed Degradation study, which pertains to the area below the site considered for the lock and dam, is looking at the major impacts and implications of lack of sediment in the river. Not only is bed degradation a concern on the river, some areas experience the opposite and have excess sedimentation, or shoaling. Because of the size and dynamic nature of the Missouri River, it is sometimes the case that localized areas of shoaling need excess flushing flows in the same years that other areas experience degradation issues.

Sedimentation issues will also need to be considered in relation to the source and terminal reservoirs. Diverting water from the Missouri River, especially during high flow events, will likely result in sedimentation issues in the reservoirs and may also impact the infrastructure of the transfer system

## 6.9 Conclusion

Addressing the environmental permitting requirements for a project of this scope will be a monumental task that will incur substantial cost to the project. Some of the largest barriers to overcome from an environmental standpoint will likely be the threatened and endangered species on the Missouri River and the rest of the state and the compensatory mitigation requirements under Section 404 of the Clean Water Act.

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- <sup>1</sup> U.S. Environmental Protection Agency. 2013. Section 404 Permitting. <http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/>
  - <sup>2</sup> U.S. Environmental Protection Agency. 2008. Wetland Compensatory Mitigation. (EPA-843-F-08-002). <http://www.epa.gov/owow/wetlands/pdf/CMitigation.pdf>
  - <sup>3</sup> U.S. Environmental Protection Agency. 2014. NPDES Permit Program Basics. <http://water.epa.gov/polwaste/npdes/basics/>
  - <sup>4</sup> U.S. Environmental Protection Agency. 2008. National Pollutant Discharge Elimination System (NPDES) Water Transfers Rule. 40 CFR Part 122.
  - <sup>5</sup> Smith, Gambrell, and Russell, LLP. 2014. Federal Court in NY Invalidates EPA Water Transfer Rule. Environmental and Sustainability Law. <http://www.sgrlaw.com/blog/2014/04/federal-court-in-ny-invalidates-epa-water-transfer-rule/>
  - <sup>6</sup> Vinson and Elkins. 2014. Federal Court Vacates EPA's Water Transfer Rule; EPA and Western States Appeal. Water Blog. <http://water.velaw.com/FederalCourtVacatesEPAsWaterTransfersRuleEPAWesternStatesAppeal.aspx>
  - <sup>7</sup> U.S. Army Corps of Engineers, Regulatory Program Headquarters. Rivers and Harbors Act of 1899 – Sec. 9. <http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/materials/rhsec09.pdf>
  - <sup>8</sup> U.S. Army Corps of Engineers, Regulatory Program Headquarters. Rivers and Harbors Act of 1899 – Sec. 10. <http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/materials/rhsec10.pdf>
  - <sup>9</sup> U.S. Environmental Protection Agency. 2012. National Environmental Policy Act (NEPA). <http://www.epa.gov/compliance/basics/nepa.html>



# Update of 1982 Six State High Plains Aquifer Study

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## Chapter 7: Preliminary Political Assessment

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A political assessment of a project of this magnitude is subjective by its nature. However, the authors (Pope and Rolf) do have extensive experience dealing with the administration of water law in Kansas, interstate water issues and participation in various organizations related to the Missouri River. Much of this experience involved conflicts and disputes related to water shortages or water allocation issues related to various projects, proposals or compacts. As a result, this experience does provide some capability to assess expected reactions to various issues, projects or proposals. An objective attempt will be made to evaluate the reaction to various components of the Kansas Aqueduct Study involving the potential transfer of water from the Missouri River to Western Kansas and/or other areas along the way. In any event, objective information and public education regarding the project, as well as coordination with various organizations with an interest in water, natural resources, the environment, economic development, public water supply and other interests should help people respond to the project in a more informed way.

## **7.1 Interstate Coordination**

There have been six different organizations with direct state involvement that operated in the Missouri River Basin at different times in the past. These organizations have been involved in differing activities that have included coordination, communications, planning, joint political action, as well as other related issues, such as the identification, discussion and resolution of issues of concern to the participants.

### **7.1.1 Missouri River States Committee (MRSC)**

The first organization was the Missouri River States Committee (MRSC) that was formed May 21, 1943 to institute a basin wide political action group.<sup>1</sup> It functioned as a ten state coalition to lobby Congress for the extensive water resources development programs that became the Pick-Sloan Program.

### **7.1.2 Missouri Basin Inter-Agency Committee (MBIAC)**

During the period 1950 through 1954, the MRSC attempted to negotiate a basin wide compact without success. The Missouri Basin Inter-Agency Committee (MBIAC) was formed by the Federal Inter-Agency River Basin Committee after Congress adopted a comprehensive plan for water resources development for the Missouri River Basin (Pick-Sloan Program)<sup>2</sup>. It operated from 1945 through 1972. Its purpose was to interchange information and coordinate activities of the federal and state agencies in the planning and development of water and related land resources throughout the basin. Membership included the Governors of the ten basin States and representatives of seven Federal Departments.

### **7.1.3 Missouri River Basin Commission (MRBC)**

The Missouri River Basin Commission (MRBC) was established on March 22, 1972 by an executive order issued by President Richard M. Nixon.<sup>3</sup> The commission was created under the auspices of the Water Resources Planning Act of 1965. The Commission had a presidentially appointed chairman. The members were representatives of the basin Governors, federal agencies and two of the several interstate river compact commissions on tributaries in the basin. The commission had no regulatory power. MRBC was established to prepare and keep current a comprehensive, coordinated joint plan (CCJP) for resource development and recommend long-range schedules of priorities for data collection and investigation, planning and construction of projects.<sup>4</sup> The Commission adopted the MBIAC Comprehensive Framework Study plan as the first step in preparing the CCJP, but also established a process to update the existing framework report, initiated "Level B" Basin Planning in various areas and Project Planning. The Commission published its first water management plan for the basin in 1977 and

an updated plan was adopted in 1981. It ultimately published numerous documents ranging from planning and technical reports to proceedings of meetings and seminars, annual reports and newsletters.<sup>5</sup> The Missouri River Basin Commission, along with five other similar commissions was terminated by Executive Order of President Reagan on September 30, 1981.<sup>6</sup>

#### **7.1.4 Missouri Basin States Association (MBSA)**

Upon the dissolution of the Missouri River Basin Commission in 1981, the ten state governors formed the Missouri Basin States Association (MBSA) to continue some of the activities of the then defunct Missouri River Basin Commission. Pursuant to terms of the Executive Order dissolving MRBC, MBSA was able to receive the assets and unexpended funds from MRBC. MBSA representatives were appointed by the Governors. Federal officials were not members, but were encouraged to participate. MBSA was organized to continue regional water resource coordination in the basin, to analyze regional water resources issues and to complete two major ongoing studies begun by MRBC, the hydrology and flood plain studies. It was recognized that the programs of MBSA would be reduced in scope and funding from those conducted by MRBC during the previous decade. The MBSA statement of purpose noted that it serves as a forum for the identification, discussion and possible resolution of issues of concern to the basin states, but would not supplant the states' role of planning and managing water resources within their boundaries.<sup>7</sup> After the two studies were complete and the federal funds expended, the staff was reduced. After a few years, interest in the organization was not sufficient to support the remaining four staff members through state dues and the office in Omaha, Nebraska, was closed in 1988<sup>8</sup>.

#### **7.1.5 Missouri River Basin Association (MRBA)**

Most of these organizations included participation of both States and Federal agencies with water or natural resources responsibilities in the basin, but it was not until the Missouri River Basin Association (MRBA) was created through restructuring of the Missouri Basin States Association in 1993 that a seat on the board was provided for the Mni Sose Intertribal Water Rights Coalition, an organization created in 1993 to represent many of the water interests of the Tribes in the basin.<sup>9</sup>

#### **7.1.6 Missouri River Association of States and Tribes (MoRAST)**

After the Revised Master Manual was adopted, it became clear that water management and biological issues were so interrelated that the States needed a more coordinated way to provide advice to the Corps and other Federal agencies and that the Tribes should have more involvement. As a result, with MRBA leadership, the Missouri River Association of States and Tribes (MoRAST), was organized by State and Tribal officials to create a new, more broadly based organization to represent a broad range of interests. Tribes were given representation equal to the number of states involved and both the state water management and fish and wildlife agencies were included as state participants.<sup>10</sup>

However, there was not total agreement with this approach. While it participated in the organizational process, the State of Missouri did not join MoRAST. More recently, the States of Iowa and Nebraska have withdrawn as members of MoRAST, leaving it with only five state members. While it is not totally clear what has driven these decisions, developing recommendations to the Corps dealing with the operation of the Mainstem Reservoir System has been a challenge for MoRAST, especially considering the historic upstream/downstream conflict and the complexities associated with water management and the implementation of the Missouri River Recovery Program. The flood of 2011 also focused attention on the importance of flood control along the Missouri River compared to other priorities for some of the states.<sup>11</sup>

While MoRAST is still active, this recent experience illustrates the different views among the States, Tribes, Federal agencies and various other interests, about how to approach coordination and resolution of issues in the basin. For example, while many people in the basin share an interest in the value of flood control and the need for good quality drinking water supplies, there are more divergent views about various other water issues in the basin, including the differences between uses that consume significant amounts water, including the potential transfer of water out of the Missouri River Basin, even in the same State, versus various uses that do not consume much water, but require large flows for instream uses, such as navigation. There are also differences among various interests in the basin regarding the how to deal with recovery of endangered species, environmental resources and the potential effect on other uses.

## **7.2 Preliminary Assessment of the Project's Political Acceptability**

There are components of an aqueduct project that may generate local or region concern. It is not uncommon for there to be political opposition to the transfer of a large amount of water out of the area of origin, as people are often concerned about the potential loss of water as a critical resource for current and future uses of all kinds. Under Kansas law, these issues can be considered pursuant to the Kansas WTA as noted earlier in this report. Based on the 1982 Study, the combination of source and terminal reservoirs, canal and conduit and pumping plants would require between 68,000 and 92,000 acres of land for an aqueduct project, depending on the design capacity. There is often concern or opposition to the taking of land for public projects, especially if done by condemnation. Issues concerning condemnation were discussed by Peck in his article.<sup>12</sup> The aqueduct is also a large project that would be expensive. A determination of how it would be financed, the costs and benefits and who would pay any new taxes or fees, versus who is expected to receive the benefits, would likely generate a lot of political consideration. However, given the potential to meet important water needs in a broad area of the state, provide a sustainable supply of water to maintain the local, regional and state economy generated by the productive irrigated agricultural and related agri-business in High Plains – Ogallala aquifer area of western Kansas, as well as to provide water for economic development and stability in Kansas, the project may also receive a large amount of support.

## **7.3 Preliminary Assessment of Secondary Uses of Transferred Water**

A number of possible uses have been discussed in this report, including potential uses for wildlife water supply at refuges and municipal and industrial uses, although there may be water quality or environmental constraints, especially at wildlife refuges, that could otherwise directly benefit from additional water from an aqueduct project. Nevertheless, the possibility of water being available for such uses may increase political support, or at least mitigate other concerns that may exist related to the project.

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<sup>1</sup> Ferrell, John R. 1993. *Big Dam Era*. U.S. Army Corps of Engineers. [http://www.nwd-mr.usace.army.mil/rcc/reports/rcc\\_publications\\_reports.html](http://www.nwd-mr.usace.army.mil/rcc/reports/rcc_publications_reports.html).

<sup>2</sup> Ibid.

<sup>3</sup> Missouri River Basin Commission. 1973. *First Annual Report*. [http://library.ndsu.edu/tools/dspace/load/?file=/repository/bitstream/handle/10365/6955/y3m69\\_1973.pdf?sequence=3](http://library.ndsu.edu/tools/dspace/load/?file=/repository/bitstream/handle/10365/6955/y3m69_1973.pdf?sequence=3).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

- <sup>6</sup> Executive Order 12319. 1981. <http://www.archives.gov/federal-register/codification/executive-order/12319.html>
- <sup>7</sup> Missouri Basin States Association. 1983. *MBSA Basin Bulletin No. 1*. June 4. <http://library.ndsu.edu/repository/handle/10365/6362/browse>.
- <sup>8</sup> Ferrell, John R. 1993. *Big Dam Era*. U.S. Army Corps of Engineers. [http://www.nwd-mr.usace.army.mil/rcc/reports/rcc\\_publications\\_reports.html](http://www.nwd-mr.usace.army.mil/rcc/reports/rcc_publications_reports.html).
- <sup>9</sup> Ibid.
- <sup>10</sup> Pope, David L. 2012. *Missouri River Water Management White Paper*. Prepared for the Kansas Water Office. August.
- <sup>11</sup> Office of Governor Terry Branstad, letter of November 3, 2011.
- <sup>12</sup> Peck at 205 (see endnote 56 in Chapter 5)