

Feb 6, 2009:

The Solutions Sub-Committee makes the following recommendations to the Arkansas River Irrigation Consumption Rules Advisory Committee:

- A. The Sub-Committee supports and appreciates the willingness of the Lower Arkansas Valley Water Conservancy District (LAVWCD) to establish ongoing means and methods to assist farmers and ranchers in complying with the Rules, including the development of individual and group Rule 10 Compliance Plans and to enter into intergovernmental agreements between itself and entities outside of its specific boundaries when necessary to support the development of group Rule 10 Compliance Plans throughout the Arkansas River Basin.
- B. The Sub-Committee also supports the Upper Arkansas Water Conservancy District's intent to take the lead on compliance efforts for irrigators above Pueblo.
- C. The Sub-Committee also encourages the formation of group Rule 10 Compliance Plans in areas such as the Upper Basin, Fountain Creek and the Purgatoire River.
- D. Water users should be free to choose to apply for Rule 10 Compact Compliance Plans as individuals or as a group of water users, as a member of a water user association, a shareholder in a ditch company, or in any other combination that is determined to be beneficial as experience is gained.
- E. Approval of General Permits, Rule 7 Plans, and Rule 10 Compliance Plans should be non-expiring and not require applicants to resubmit redundant information on a yearly basis to the extent practicable. The State Engineer's goal is to make the approval process as simple and as streamlined as possible. Ultimately there will be only one application filed for each improvement, or group of improvements, with annual updates of projected irrigation, maintenance flows and accounting, under either an individual plan or a group plan.
- F. The Sub-Committee recommends that group Rule 10 Compliance Plans should include terms and conditions that allow the group to take credit for *accretions* in return flows at appropriate times and locations due to improvements covered under the same Rule 10 Plan or by agreement with another Plan.
- G. For improvements to irrigation systems diverting from the mainstem below Pueblo Reservoir or diverting from tributaries to the mainstem below La Junta, the Rule 10 Compliance Plans should require maintenance flows to be provided in the same general location as the pre-improvement return flows to the fullest extent reasonably possible. For improvements to systems located upstream of Pueblo Reservoir or upon a tributary to the mainstem above La Junta, providing the maintenance flows by releasing water from Pueblo Reservoir will suffice where reasonably necessary due to lack of available storage or water supplies upstream or upon a tributary above La Junta. In determining "reasonably necessary," the costs and locations of storage and supplies upstream shall be evaluated and a determination shall be made based on whether provision of maintenance flows upstream or on the tributary is materially more expensive or otherwise burdensome on the applicant than release of maintenance flows from Pueblo Reservoir. Storage releases in Rule 10 Compliance Plans should be administered as necessary to assure Compact Compliance.

- H. The Sub-Committee recommends the LAVWCD use Fry-Ark return flows as a source of water for maintenance flows to the greatest extent possible, recognizing that Fry-Ark return flows may only be used to benefit water users within Southeastern District boundaries, consistent with Southeastern's policies and other conditions on use of these return flows, and recognizing the need to balance the use of these waters for this purpose with well users' historical reliance on such water for their well replacement plans. The Sub-Committee requests the Southeastern District and ditch companies to cooperate with LAVWCD to facilitate the use of these return flows in Rule 10 Compliance Plans where eligible.
- I. The Sub-Committee recognizes the significant work of the Engineering Subcommittee to peer-review and refine the Irrigation System Analysis Model (ISAM), including the parameters adopted from the H-I Model and whether they were correctly applied. The Sub-Committee recognizes the ISAM must be consistent with the legal constraints of *Kansas v. Colorado*, including the H-I Model.
- J. The Sub-Committee recognizes that the LAVWCD will hire an engineer soon, either in-house and/or consulting, to attend the Engineering Sub-Committee meetings and to review the models, data, and assumptions Division 2 has developed in consultation with the Engineering Sub-Committee and proposes to use to evaluate compliance with the Proposed Rules, as well as to assist in developing group and individual Rule 10 Compliance Plans, and to assist farmers and ranchers in analyzing whether to file as individuals or as part of a group.
- K. The Sub-Committee recommends LAVWCD's engineer(s) begin investigating and evaluating other potential sources of water for use in Rule 10 Compliance Plans, in addition to Fry-Ark return flows, including: water banks, interruptible supply agreements, crop fallowing, acquisition of LAWMA shares, Tri-state's LAWMA shares, private sources, Pueblo Board of Water Works resources, and dry-up of low-yield farm land. Lower Ark and the Division Engineer's Office should meet with LAWMA soon regarding the potential for use of LAWMA shares in Rule 10 Plans.
- L. The Division Engineer's Office should begin working cooperatively with the LAVWCD to develop application forms and generic and specific individual and group compliance plans so that they will be ready by January 2010 for implementation in March of 2010.
- M. The LAVWCD should work directly with the irrigators who are covered by the Rules, handling the communications necessary to develop and update the compliance plan(s), and providing irrigators with engineering assistance that is independent of the Division Engineer's Office.
- N. The LAVWCD should meet with administrative members of the Lower Arkansas Water Management Association, Colorado Water Protective Development Association, and/or Arkansas Groundwater Users Association to begin educating itself in best business practices for the development and administration of water user plans.
- O. Irrigators who are likely to be subject to the Rules and who do not expect to join a group plan or develop an individual plan with the assistance of the LAVWCD

- should begin planning now to obtain appropriate sources of water to effect necessary compliance with the Rules in the 2010 irrigation season.
- P. The Sub-Committee supports the State Engineer's determination to enforce the Rules prospectively and not retroactively, which will ease the initial burden of compliance.
 - Q. Ditch companies should consider exercising in April 2009 their right of first refusal on part or all of their Fry Ark Return Flows, from which some lagged flows will be available for use in 2010 for compliance plans.
 - R. LAVWCD, the Colorado Water Conservation Board and the State and Division Engineers' Offices, should work cooperatively to examine and pursue any and all avenues to obtain funding for engineering services, water supplies, and storage for Compact Compliance Plans, including from State and Federal appropriations, grants and loans, and specifically the USDA Agricultural Water Enhancement Program (AWEP).
 - S. The Sub-Committee supports the CWCB's request in S.B. 09-125 for \$250,000 in the 2009 Projects Bill to support the LAVWCD's efforts to develop compliance plans and otherwise to assist the irrigators in complying with the Rules. The Sub-Committee recognizes that it may take three to five years to refine Rule 10 Compliance Plans so that they reach the same level of acceptance and routine operation now evident in well replacement plans, and that the LAVWCD will need financial assistance during that period to work effectively with irrigators and the Division Engineer to reach that state of compliance.
 - T. LAVWCD should project and plan for long term Compact compliance requirements under the Rules, so that farmers can have confidence that their Rule 10 Compliance Plan will be adequate for the long term.
 - U. Although the evaluation of each improvement will be on a farm-by-farm basis, the LAVWCD should create models for each ditch system to estimate the impact of installing an improvement and drying up some land, such as one to four corners for a circle sprinkler, as offsets, so that farmers can come into the LAVWCD office and estimate how much a Rule 10 Compliance Plan for an improvement will cost annually, and for some reasonable period into the future.