

Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES
Brian P. Dunnigan, P.E.
Director

April 10, 2009

IN REPLY TO:

VIA E-MAIL AND U.S. MAIL

Mr. Dick Wolfe
Colorado Commissioner, Republican River Compact Administration
Director, State Engineer
Office of the State Engineer
1313 Sherman Street, Suite 818
Denver, CO 80203

Re: Issues Related to Colorado's Proposed Compact Compliance Pipeline (CCP)

Dear Commissioner Wolfe:

We are looking forward to the Special Meeting of the Republican River Compact Administration (RRCA) that is tentatively scheduled to take place by telephone conference call on Tuesday, April 28, 2009 at 9:00 AM MDT / 10:00 AM CDT. The primary purpose of the meeting is to discuss Colorado's proposed Compact Compliance Pipeline (CCP) for streamflow augmentation. The Nebraska Department of Natural Resources (NDNR) believes that streamflow augmentation may be a useful tool for achieving compact compliance, and continues to support Colorado's efforts to achieve approval within the RRCA.

PRIOR DISCUSSION

The three states have put considerable effort into discussions of Colorado's plans. In addition to a multitude of email messages and conference calls among the technical staff of the three states, the CCP was discussed during six RRCA Engineering Committee meetings:

- Kansas City, Missouri during March and April 2008
- Denver, Colorado, May 2008
- Lincoln, Nebraska during May and August 2008, and
- Denver, Colorado, November 2008.

At the most recent face-to-face meeting Kansas and Nebraska traveled to Denver at Colorado's request for the primary purpose of discussion of the CCP. The RRCA contracted with a mediator to assist with the discussion so that it could be conducted in a more productive manner, and lead to resolution of a number of issues.

NEBRASKA CONCERNS

In your proposal we do not see language that adequately addresses the following items:

- Protection for Nebraska surface water users on the North Fork Republican River, and
- Effective limits on water volumes pumped into the North Fork Republican River.

Regarding the first item, Nebraska has repeatedly stated that its surface water users cannot be harmed in the short-term or long-term by our approval of Colorado's augmentation proposal. Nebraska has not attempted to dictate a solution to Colorado, although we have put several ideas forward that have apparently been discarded by Colorado.

Water deliveries to the Nebraska portion of the Pioneer Ditch (known as the Haigler Canal) in Nebraska have declined in recent years to levels that have been a cause for concern to the landowners. This situation improved during 2008, with decreased consumption in Colorado, and yet average daily flows at the state line peaked at less than 23 cubic feet per second (cfs), well under the water right of 29 cfs. Therefore, stream levels have already been reduced to a level that interferes with water rights on the canal. Nebraska has requested that Colorado implement a plan that does not lead to increased impacts (decreased supply) for this canal.

Recently, Colorado proposed that the following language be added to the resolution under discussion:

"Nothing in this resolution shall reduce or otherwise alter the water rights that were the subject of Weiland, et al. v. The Pioneer Irrigation Company, 259 U.S. 498 (1922) and specifically recognized in Article V of the Compact. If at some future time streamflows are reduced to levels that may interfere with such water rights, the States of Colorado and Nebraska agree to confer at such time to seek resolution of the issue."

While we appreciate your recognition of the need to protect Nebraska water users along the Haigler Canal, deferring the solution to a problem which already has manifested itself is not acceptable to Nebraska.

Regarding the second item, Nebraska has favored a number of proposals that would limit the volume of augmentation water supply credit available. One such proposal would limit the credit to Colorado's deficit within the sub-basin. Separate, but related proposals would limit the negative impacts in the Main Stem due to Colorado pumping.

Nebraska is concerned because under proposed accounting the State of Nebraska will be responsible for conveying the augmentation water to Hardy, in spite of the fact that much of it

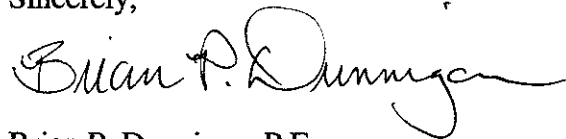
Mr. Dick Wolfe
April 10, 2009
Page 3

will be lost in transit. We therefore do not believe that it is appropriate for Colorado to make up for deficits on the South Fork Republican or Arikaree Rivers by placing large volumes of water in the North Fork Republican River, and asking Nebraska to take responsibility of the entire volume.

SUMMARY

We understand (based on our discussions) that Colorado is planning on an operational period of two to three decades. While Nebraska understands that Colorado retains flexibility in how she chooses to achieve compliance, we are concerned that if pumping is not decreased during this time frame that compliance will be even more difficult for Colorado to achieve at the end of that time. However, we believe that Nebraska's concerns could be quickly addressed by Colorado. We look forward to additional productive discussions regarding stream flow augmentation. If you have any questions regarding these matters please call me at (402) 471-2366.

Sincerely,

A handwritten signature in cursive script that reads "Brian P. Dunnigan". The signature is written in black ink and is positioned above the typed name and title.

Brian P. Dunnigan, P.E.
Director

cc: Mr. David Barfield, P.E., Kansas Commissioner