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VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

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Subject: Republican River Compact Arbitration;
Notice pursuant to Article VII.B.6 of the Final Settlement Stipulation;
Colorado Compact Compliance Pipeline; Nebraska Crediting Issue

Dear Messrs. Ampe, Draper and DuBois:

This letter is submitted pursuant to the Final Settlement Stipulation ("FSS"), art. VII.B.6., *Kansas v. Nebraska and Colorado*, No. 126, Original. This provision requires that "within 30 days of the issuance of the Arbitrator's decision, the states that are parties to the decision shall give their written notice to the other states and the United States as to whether they will accept, accept and reject in part, or reject the Arbitrator's decision." On October 7, 2010 the Arbitrator,

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Ms. Martha Pagel, rendered her decisions on the Colorado Compact Compliance Pipeline and the Nebraska Crediting Issue.

Colorado Compact Compliance Pipeline

The Arbitrator's decision on the Colorado Compact Compliance Pipeline includes Ultimate Findings and Conclusions ("UF&C") on eight separate issues. Each of those is listed below and is followed by Nebraska's written notice of its response thereto.

Ultimate Findings and Conclusions

UF&C No. 1: The CCP Proposal does not meet the requirements of the FSS because it does not propose use of the Groundwater Model to calculate the amount of augmentation credit. Therefore, it is not unreasonable for Kansas to withhold its consent to the CCP Proposal on this basis.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 2: The CCP Proposal is not intended to allow Colorado to replace South Fork overuse with augmentation flow delivered to the North Fork for purposes of determining Compact compliance with sub-basin allocations; however, the intention should be more clearly reflected in the Proposal and related modifications to the RRCA Accounting Procedures. The CCP Proposal would allow for use of North Fork augmentation in computing Colorado's statewide compliance; however, Kansas raises a legitimate policy question as to whether an augmentation plan may be used to artificially create a surplus in one sub-basin in order to meet the statewide compliance test. Therefore, it was not unreasonable for Kansas to withhold its consent to the CCP Proposal on this basis.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 3: Additional operational limits and details are needed in the CCP Proposal to adequately incorporate Colorado's stated intentions for dealing with minimum and maximum annual deliveries. Without such changes, the CCP Proposal does not reflect changes resulting from the Stipulated Agreement entered into between Colorado and Nebraska.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 4: The CCP Proposal should be amended to include temporal limits. Although such limits are not specifically required under the FSS, the unique nature of the CCP Proposal as the first augmentation plan considered by the RRCA, and the complexity of operational questions raised support the need for time limits and periodic review.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 5: The specific changes Colorado proposes to the RRCA Accounting Procedures are complete for purposes of implementing the CCP Plan as currently proposed; however, further

changes would be needed to incorporate and address recommended changes in order to allow for final approval.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 6: The proposed "catch up" provisions offer a reasonable mechanism to implement the CCP Proposal as envisioned by Colorado. However, the objections raised by Kansas are equally reasonable when the "catch up" plan is considered in the context of the CCP Proposal's overall approach for determining minimum and maximum deliveries and providing for "catch up" as needed. Accordingly, it is not unreasonable for Kansas to withhold approval of the Proposal on this basis.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 7: The process Colorado proposes for authorizing possible future expansion of the pipeline is not unreasonable and does include provisions for RRCA approval. Therefore, this objection lacks merit.

Nebraska's Response: Nebraska accepts the UF&C.

UF&C No. 8: The refusal by Colorado and Nebraska to disclose the terms of their stipulated agreement does not mandate that the CCP Proposal be rejected. In the absence of a motion to compel production of the documents, it is not necessary to deal with this issue in the Arbitration proceedings.

Nebraska's Response: Nebraska accepts the UF&C.

Nebraska Crediting Issue

The Arbitrator's decision on the Nebraska Crediting Issue includes six preliminary UFC and concludes with seven Final Conclusions and Recommendations ("C&R"). Each of those is listed below and is followed by Nebraska's written notice of its response thereto.

Ultimate Findings and Conclusions

UF&C No. 1: Implementation of the Crediting Proposal is not necessary to avoid a double recovery for damages that may be paid by Nebraska to compensate Kansas for past violations of the Compact. The system of evaluating "running averages" for multiple-year compliance periods established under the FSS establishes a framework for identifying discrete, separate violations for which damages or other remedies may be sought. It is not necessary or appropriate to provide a "credit" in the FSS accounting procedures for determining compliance in subsequent accounting periods. To do so would undercut the purposes of the Compact and the complex, but agreed upon structure of running averages used to determine compliance.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 2: The Crediting Proposal would be contrary to the Compact and FSS by substituting money for water during the years in which a credit would be substituted for actual water use to determine Compact compliance.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 3: Implementation of the Crediting Proposal would not encourage future Compact violations.

Nebraska's Response: Nebraska accepts the UF&C.

UF&C No. 4: The Crediting Proposal would not deprive Kansas of water due to its users in the future if the plan were implemented only for the three compliance periods identified by Nebraska.

Nebraska's Response: Nebraska accepts the UF&C.

UF&C No. 5: The Crediting Proposal is incomplete, and should not be approved in the form presented to the RRCA.

Nebraska's Response: Nebraska rejects the UF&C.

UF&C No. 6: Because of the broad scope of review allowed under the FSS arbitration provisions, the Crediting Proposal is not premature for consideration in this forum.

Nebraska's Response: Nebraska accepts the UF&C.

Final Conclusions and Recommendations

C&R No. 1: The system of rolling averages and multiple-year compliance periods used for determining Compact compliance was negotiated and agreed to by the States and should be the foundation in any plan for addressing the payment of damages.

Nebraska's Response: Nebraska accepts the C&R.

C&R No. 2: The system offers each State the flexibility, and responsibility, to first attempt to manage water use in a way that balances overuse and underuse of water during any given compliance period.

Nebraska's Response: Nebraska accepts the C&R.

C&R No. 3: The system reflects an underlying intent to ensure an equitable distribution of water to each State. In that regard, the States have implicitly placed a higher value on the receipt of water in compliance with Compact Allocations than on the receipt of damages for Compact violations.

Nebraska's Response: Nebraska accepts the C&R.

C&R No. 4: The system does not preclude the payment of damages for noncompliance during any two-year or five-year compliance period. The completion of each period triggers a new determination of compliance and gives rise to a separate potential violation, or "wrong" that would be the basis for a claim seeking damages or other relief.

Nebraska's Response: Nebraska rejects the C&R.

C&R No. 5: As a result, the system of rolling averages and multiple-year compliance periods does not create the need for a crediting concept such as has been proposed by Nebraska. Although the legal arguments relating to election of remedies appear persuasive at first blush, they do not bear up under a more detailed analysis of the complex and unique structure for determining Allocations and Computed Consumptive Beneficial Use on an annual basis while relying on rolling averages over the two- or five-year periods to determine compliance with Compact obligations.

Nebraska's Response: Nebraska rejects the C&R.

C&R No. 6: The Crediting Proposal would result in an artificial manipulation of the Tables required for use under the FSS Accounting Procedures. The result would be to deprive Kansas of the ability to seek and obtain full compensation for any subsequent period of noncompliance relying on the manipulated Tables. Conversely, Nebraska would receive on-going, multiple-year benefits from the one-time payment of damages.

Nebraska's Response: Nebraska rejects the C&R.

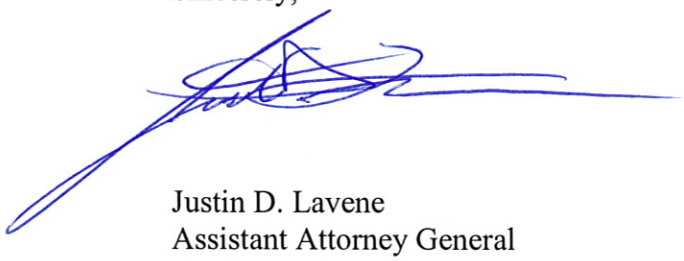
C&R No. 7: The fact that Nebraska is now on track for future compliance with its Compact Allocations provides an opportunity to focus on the three periods of past violation that Nebraska indicates were intended to be addressed under the Crediting Proposal. Because the extent of these past violations is known and complete at this point in time, the States have an opportunity to consider a one-time negotiated settlement of monetary damages as an alternative to the Crediting Proposal.

Nebraska's Response: Nebraska accepts in part and rejects in part the C&R. Nebraska agrees that it is on track for future compliance. While Nebraska will consider alternatives to the Crediting Issue, no other State has yet presented an alternative to avoid the potential for double-recovery. Nebraska rejects the conclusion that "the extent of these past violations is known and complete" because that remains subject to ongoing proceedings in *Kansas v. Nebraska and Colorado*, No. 126, Orig.

With this submission, Nebraska concludes the Arbitration process. Nebraska's acceptance of any finding, conclusion or recommendation, in whole or in part, does not mean that Nebraska accepts the Arbitrator's underlying analysis supporting that finding, conclusion or

recommendation. Nor shall the acceptance or rejection of any finding, conclusion or recommendation be binding upon Nebraska in any future proceeding.

Sincerely,



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