

November 30, 2009  
By U.S. Mail and Email

Dick Wolfe, State Engineer  
Colorado Commissioner  
Republican River Compact Administration  
Colorado State Engineer  
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Dear Commissioner Wolfe:

At the Republican River Compact Administration (“RRCA”) meeting in Lincoln on August 12, 2009, the states of Kansas and Nebraska voted against Colorado’s resolution to approve Colorado’s Compliance Pipeline (“CCP”). Shortly afterwards, the Republican River Water Conservation District of Colorado (“the district”) wrote to the states of Kansas and Nebraska requesting an explanation of the reasons for their votes and the concerns behind them. This letter is Kansas’ response to that request, which is provided in the hope that it will contribute to a successful resolution of the issue.

Kansas has been working closely with Colorado to seek agreement on the CCP. Kansas does not oppose the idea of the CCP as a matter of principle. However, Kansas cannot agree to a proposal that is inconsistent with the Compact and Final Settlement Stipulation (FSS), and is against our interest as a state. As I elaborate below, Kansas’ concerns about the CCP are real and significant, and affect Nebraska as well as Kansas.

While the FSS does not specify detailed requirements for augmentation plans, it requires the plan and its accounting procedures to be agreed upon by the Compact states through the RRCA prior to implementation.

The three principal objections Kansas has to the CCP in its present form are as follows: First, it proposes to exchange North Fork groundwater deliveries for South Fork well depletions. Second, the CCP proposal does not appear to provide effective limits on the accumulation of delivery credits over time. Finally, Colorado’s proposal for accounting and modeling does not accurately reflect the impact of the CCP.

**1. *South Fork Overuse.***

First, Kansas is concerned that the CCP does not conform to a fundamental prohibition of both the Compact and the FSS: namely, that the overuse of an upstream state cannot deprive a downstream state of its right to develop the specifically allocated waters of its sub-basins. Both the Compact and the

FSS allocate and measure the waters of the Republican River Basin by its discrete sub-basins, not by gross delivery at a state line. In the initial five years of accounting since the FSS became law, Colorado has overused its North Fork allocation by approximately 8,000 AF per year and its South Fork allocation by approximately 6,000 AF per year. Included within Colorado's South Fork overuse is the use of a significant portion of Kansas' specific allocation on the South Fork. Under the current CCP proposal, Colorado seeks to comply with the Compact by pumping groundwater from the North Fork sub-basin and placing it in the North Fork alone. This approach fails to address Colorado's overuse on the South Fork sub-basin; as a result, Kansas' South Fork water users would remain deprived of their Compact share. Kansas' insistence that its South Fork users receive their allocation is not an obstacle to compliance; rather, it is a central requirement of Compact compliance, and it is not transferable to a different sub-basin. The CCP must satisfy each sub-basin test under both the Compact and the FSS.

In light of this problem, Kansas has proposed a potential solution: constructing an extension to the pipeline that would deliver water to one of the tributaries of the South Fork in Kansas. Such an extension would increase construction costs, but it carries at least three benefits. First, it secures the reliable source of water to the South Fork that Kansas users must receive under the Compact. Second, it preserves Colorado's commitment to the sub-basin allocations of the Compact, and, in doing so, vastly reduces the likelihood of controversy and possible litigation on this issue. Finally, it avoids placing Nebraska in the awkward position of acting as a middleman for Colorado's compliance obligations to Kansas.

In discussing the South Fork issue with Colorado, it has been suggested that Colorado should be allowed to move forward with its North Fork pipeline without addressing the South Fork issue by adding a limitation on the amount of credit to insure it does not include Kansas South Fork water. Unfortunately, this suggestion has two problems: it fails to address the total of Colorado's non-compliance, and it would be very difficult to administer in combination with other limitations in the accounting, as noted below.

## **2. *The accumulation of credits over time.***

Kansas' second concern relates to how the CCP proposal will affect the RRCA accounting. In its current form, the CCP proposal continues to fail to set an effective limit on annual maximum deliveries. As a result, the proposal does nothing to prevent Colorado from amassing a very large accounting credit. This is again inconsistent with the principle of replacing depletions when and where they occur. Without an effective limit, Colorado could over-deliver water in wet periods and under-deliver in dry ones. Kansas has provided specific suggestions that would resolve this concern while providing Colorado with a reasonable degree of flexibility, but those suggestions have not been included in Colorado's resolution.

## **3. *Accounting issues.***

Kansas' third concern relates to problems that the CCP proposal poses to the surface water and groundwater accounting. The CCP proposal seeks to offset the over-depletion of baseflows on the North Fork. Since the augmentation water comes in the form of baseflow augmentation, Kansas has proposed that the appropriate way to account for the water is to provide Colorado with a 100% credit at the stateline, and then to include the augmented baseflows in the RRCA groundwater model. This is the most appropriate way to account for this water. In the alternative, Kansas has offered to provide Colorado with a 100% credit at the stateline, but cap the negative depletions predicted by the model in the mainstem

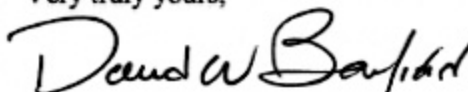
reach. Either of these alternatives would mirror the modeling/accounting results that would occur if Colorado actually reduced groundwater consumptive use.

In either case, Kansas cannot ignore the effects of including the augmentation of baseflows in the surface water accounting, while allowing the distortion of the groundwater model results on the mainstem reach of the Republican. Although Kansas has repeatedly stressed these problems, Colorado has yet to propose accounting changes that would address them.

In addition, if the states reach an agreement on how to properly account for the CCP, the appropriate operational limitations must be clearly added to the accounting procedures.

I hope that this summary clarifies Kansas' concerns over the CCP.

Very truly yours,

A handwritten signature in black ink that reads "David W. Barfield". The signature is written in a cursive style with a large, prominent "D" at the beginning.

David W. Barfield  
Kansas Commissioner, RRCA

cc: Brian Dunnigan, Nebraska Commissioner, RRCA (by U.S. Mail and email)  
Pete Ampe, Asst. Attorney General, State of Colorado (by email only)  
Dennis Coryell, RRWCD (by email only)  
Stan Murphy, RRWCD (by email only)  
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