

RESOLUTION BY THE REPUBLICAN RIVER COMPACT ADMINISTRATION
APPROVING OPERATION AND ACCOUNTING FOR THE COLORADO COMPACT
COMPLIANCE PIPELINE AND COLORADO'S COMPLIANCE EFFORTS IN THE SOUTH
FORK REPUBLICAN RIVER BASIN

RECITALS

Whereas, the States of Kansas, Nebraska, and Colorado (each, a “State”, and collectively, the “States”) entered into a Final Settlement Stipulation (“FSS”) as of December 15, 2002, to resolve pending litigation in the United States Supreme Court regarding the Republican River Compact (“Compact”) in the case of *Kansas v. Nebraska and Colorado*, No. 126 Original;

Whereas, the FSS was approved by the United States Supreme Court on May 19, 2003;

Whereas, the State of Colorado’s Computed Beneficial Consumptive Use of the waters of the Republican River Basin exceeded Colorado’s Compact Allocation using the five-year running average to determine Compact compliance from 2003 through 2012, as provided in Subsection IV.D of the FSS;

Whereas, the Republican River Water Conservation District is a water conservation district created by Colorado statute to assist the State of Colorado to comply with the Compact;

Whereas, the Republican River Water Conservation District, acting by and through its Water Activity Enterprise (“RRWCD WAE”), has acquired fifteen wells (“Compact Compliance Wells”) in the Republican River Basin in Colorado and has constructed collector pipelines, a storage tank, a main transmission pipeline, and an outlet structure capable of delivering groundwater to the North Fork of the Republican River for the sole purpose of offsetting stream depletions in order to comply with the State of Colorado’s Compact Allocations;

Whereas, the RRWCD WAE has purchased groundwater rights in the Republican River Basin within Colorado and proposes to pump the historical consumptive use of some or all of these groundwater rights from the Compact Compliance Wells into the pipeline it has constructed and deliver that water into the North Fork of the Republican River near the Colorado/Nebraska state line to offset stream depletions in order to comply with Colorado’s Compact Allocations (the “Colorado Compact Compliance Pipeline” or the “Pipeline”);

Whereas, the States agreed to operate the Pipeline during 2014, 2015, and 2016 on certain terms. This Resolution does not affect accounting for those years;

Whereas, the States have now agreed to a long-term plan to operate the Pipeline on different terms, which are described below;

Whereas, Colorado, Kansas, and Nebraska wish to comply with their obligations under the Republican River Compact and believe the action described herein will assist the States in their continued efforts to meet those obligations while maximizing the beneficial use of the basin’s water for their constituents;

Whereas, Kansas’ water users in the South Fork sub-basin depend on stream flows for their livelihoods, and remain concerned about diminishing flows at the Colorado-Kansas state line;

Whereas, in addition to numerous other efforts to reduce consumption, Colorado has already removed from irrigation in the South Fork Republican River basin 23,838 acres;

Whereas, Colorado and Kansas share a belief that, by removing additional acres in the South Fork Republican River basin or otherwise reducing consumption as set forth herein, Colorado’s consumption of water in the South Fork Republican River averaged over five years will be less than or equal to its sub-basin allocation plus half of the unallocated waters of the South Fork Republican River.

Now, therefore, it is hereby resolved that the RRCA approves operation and the related accounting procedures for the Colorado Compact Compliance Pipeline subject to the terms and conditions set forth herein, including in the Recitals set forth above, which are fully incorporated as part of the agreement between the States.

A. Colorado Compact Compliance Pipeline.

The operation of the Colorado Compact Compliance Pipeline is described below. The related changes to the RRCA Accounting Procedures and Reporting Requirements (“revised RRCA Accounting Procedures”) are attached hereto as Exhibit 1. The Compact accounting will follow the terms and conditions described in this resolution and its exhibits. Beginning January 1, 2017, operation of the Pipeline and the related changes to the accounting procedures for the Pipeline is subject to the following terms and conditions:

1. The average annual historical consumptive use of the groundwater rights that will be diverted at the Compact Compliance Wells shall be the amounts determined by the Colorado Ground Water Commission pursuant to its rules and regulations, as shown on Exhibit 2.
2. Diversions from any individual Compact Compliance Well shall not exceed 2,500 acre-feet during any calendar year.
3. Diversions during any calendar year under the groundwater rights listed on Exhibit 2 and any additional groundwater rights approved for diversion through the Compact Compliance Wells shall not exceed the total average annual historical consumptive use of the rights, except that banking of groundwater shall be permitted in accordance with the rules and regulations of the Colorado Ground Water Commission, subject to the terms and conditions of this resolution.
4. Diversions from the Compact Compliance Wells shall be measured by totalizing flow meters in compliance with the Colorado State Engineer’s rules and regulations for the measurement of groundwater diversions in the Republican River basin, and the measured groundwater pumping from such wells shall be included in the “base” run of the RRCA Groundwater Model in accordance with paragraph III.D.1 of the revised RRCA Accounting Procedures. Net depletions from the Colorado Compact Compliance Wells shall be computed by the RRCA Groundwater Model and included in Colorado’s

Computed Beneficial Consumptive Use of groundwater pursuant to paragraph III.D.1 of the revised RRCA Accounting Procedures (See Exhibit 1).

5. Deliveries from the Colorado Compact Compliance Pipeline to the North Fork of the Republican River shall be measured by a Parshall flume or other measuring device located at the outlet structure. Authorized representatives of Kansas and Nebraska shall have the right to inspect the Parshall flume and other measurement devices for the Pipeline at any reasonable time upon notice to the RRWCD WAE.
6. The measured deliveries from the Colorado Compact Compliance Pipeline, to the extent they are in compliance with this resolution, shall offset stream depletions to the North Fork of the Republican River sub-basin on an acre-foot for acre-foot basis in accordance with the revised RRCA Accounting Procedures.
7. Unlike previous temporary approvals, under the plan described herein, the measured deliveries from the Colorado Compact Compliance Pipeline will not be added to the RRCA Groundwater Model. Instead, the Accounting would be performed as shown in the attached Exhibit 1. The measured outflow from the CCP will be called the Colorado North Fork Augmentation Water Supply (CCPAWS). The CCPAWS will be subtracted from the gaged flow at the North Fork Republican River at Colorado-Nebraska state line (USGS Gage 06823000) for purposes of calculating the Virgin Water Supply of the North Fork of Republican River in Colorado sub-basin.
8. The CCPAWS will then be added as a credit to Column 3 (Credits for Imported Water Supply) in Table 3A and Table 5A to provide Colorado with a credit against Colorado's CBCU. The column headers in Tables 3A, 4A, and 5A will be modified to reflect that the Augmentation Water Supply is accounted for analogous to Imported Water Supply.
9. Colorado shall determine the Projected Augmentation Water Supply Delivery (“Projected Delivery”) to estimate the volume of augmentation water that will be delivered from the Pipeline as provided below, and the RRWCD WAE shall make deliveries from the Pipeline as provided below:
 - A. Colorado will initially estimate the Projected Delivery required for each year based on the largest stream depletions to the North Fork of the Republican River sub-basin during the previous five years without Pipeline deliveries. The RRWCD WAE will begin deliveries from the Colorado Compact Compliance Pipeline each year based on the Projected Delivery and shall make a minimum delivery of 4,000 acre-feet per year as provided below.
 - B. Accounting for deliveries will start January 1.
 - C. The RRWCD WAE will begin deliveries from the Pipeline on or after January 1 and will make the minimum annual delivery of 4,000 acre-feet during the months of January, February, and March, unless such deliveries cannot be made due to operational conditions beyond the control of the RRWCD WAE. If the minimum annual delivery of 4,000 acre-feet cannot be made during the months of January, February and March due to such operational conditions, Colorado will consult with Nebraska and Kansas to schedule such deliveries later in the year.
 - D. Colorado will calculate and provide notice to the Kansas and Nebraska RRCA Members, by April 10, of the Projected Delivery as provided in paragraph 8.A of this resolution. Unless Colorado determines by April 10 that it will not be able to deliver additional required augmentation water in October through December, Colorado shall stop deliveries at the end of March. If Colorado anticipates that

deliveries in the months of November and December will not be sufficient to replace stream depletions to the North Fork of the Republican River for Compact compliance, Colorado will maximize deliveries first in January, then sequentially in the months of February, March, and April. Deliveries will be made in May only if there is reason to believe that additional deliveries in the months of October through December will not be sufficient to replace stream depletions to the North Fork of the Republican River for Compact compliance.

- E. Because the final accounting for determining Compact compliance is not done until after the compact year is completed and because Colorado's allocations and computed beneficial consumptive use are dependent upon such factors as runoff, the amount of pumping, precipitation and crop evapotranspiration, Colorado cannot know the precise amount of augmentation water that will be needed at the beginning of a calendar year. After the initial minimum delivery of 4,000 acre-feet, Colorado will collect preliminary data for Compact accounting for that year and, no later than September 10 of that year, will update the Projected Delivery required for the remainder of the year, less the initial minimum delivery of the 4,000 acre-feet that has already been delivered; but not to exceed the average annual historical consumptive use of the groundwater rights as shown on Exhibit 2.
 - F. After updating the Projected Delivery, as described above, if additional deliveries in excess of the initial delivery of 4,000 acre-feet are necessary to offset projected stream depletions to the North Fork of the Republican River, Colorado and the RRWCD WAE will maximize such additional deliveries first in the month of December, then November and October of that same year. If the total necessary additional deliveries cannot be made within those three months, Colorado will attempt to schedule those deliveries in April and May of the same year, or at such time so as to avoid, to the extent practicable, deliveries during the subject accounting year's irrigation season.
 - G. Colorado's shortage and Projected Delivery will be calculated in accordance with the FSS.
- 10. Augmentation credit for deliveries from the Pipeline to the North Fork of the Republican River shall be limited to offsetting stream depletions to the North Fork of the Republican River Colorado sub-basin for the purpose of determining Colorado's compliance with the sub-basin non-impairment requirement (Table 4A) and for calculating Colorado's five-year running average allocation and computed beneficial use for determining Compact compliance (Tables 3A and 5A).
 - 11. The approval of operation of the Pipeline and the related accounting procedures for the Pipeline shall not govern the approval of any future proposed augmentation plan and related accounting procedures submitted by the State of Colorado or any other State under Subsection III.B.1.k of the FSS.
 - 12. Colorado agrees to collect data related to pumping of Pipeline wells and delivery of water through the outfall structure of the Pipeline on at least a daily basis and provide such data to Kansas and Nebraska on a monthly basis; and by January 30 of each calendar year, will provide all spreadsheets and calculations related to the initial "Projected Delivery" of augmentation water. Colorado will provide to Kansas and Nebraska all updates to that projection within one week of the completion of any update.

B. Bonny Reservoir

1. The States agree to collaborate between now and December 31, 2017 to develop options to maximize the use of Bonny Reservoir. Any proposed change to the accounting or modeling of Bonny Reservoir will require approval by the RRCA under the terms of the Final Settlement Stipulation.
2. Colorado agrees to work in good faith with the Bureau of Reclamation, Colorado Parks and Wildlife, and Republican River Water Conservation District to maintain the flow of water through Bonny Reservoir during the term of this Resolution.

C. Irrigation in South Fork Republican River basin

1. Utilizing the Conservation Reserve Enhancement Program or other voluntary programs, Colorado agrees to retire up to an additional 25,000 acres from irrigation in the South Fork Republican River basin. Of that amount, Colorado will retire at least 10,000 acres by 2022 and will retire the remaining 15,000 acres by December 31, 2027.
2. In the event Colorado cannot or will not retire 25,000 acres by December 31, 2027, it may submit to the other States for their approval a plan to reduce consumption within Colorado by other means.

D. Water Short Year Accounting

The States agree to collaborate between now and December 31, 2017 on how to resolve the Beaver Creek issue for all water-short years in which accounting has not been finally approved by the RRCA.

E. Use of the Unallocated Supply of the South Fork

The States agree that this Resolution does not affect any State's right to use the Unallocated Supply of the South Fork Republican River or any other sub-basin. Nor should this Resolution be used as evidence of any State's legal position regarding use of the Unallocated Supply and each State hereby reserves all legal arguments concerning their rights to the Unallocated Supply or pertaining to its use.

F. Disputes under this Agreement

The States agree to work in good faith to resolve any disputes over implementation or interpretation of this Agreement, prior to submitting those disputes to arbitration under the terms of the FSS.

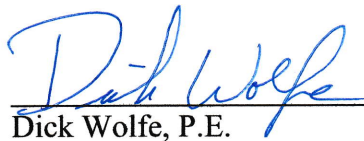
G. Term of Agreement

1. The terms of this Resolution remain in full force and effect until terminated by election of one or more States, which termination occurs on the following conditions:

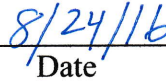
- a. The terminating State must provide a written Notice of Intent to Terminate to the RRCA not later than October 1st of the year in which a State desires to issue a Notice;
 - b. The terms of the agreement remain in full force and effect through December 31st of the second full year following the RRCA's receipt of a Notice of Intent to Terminate.
2. The States agree in 2024 to review the terms of this Resolution and progress made under its terms.

H. Compliance Measure

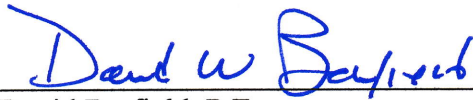
The RRCA Commissioners hereby agree that compliance with this Resolution constitutes compliance with the Final Settlement Stipulation and Republican River Compact.



Dick Wolfe, P.E.
Colorado Commissioner
Chairman, RRCA



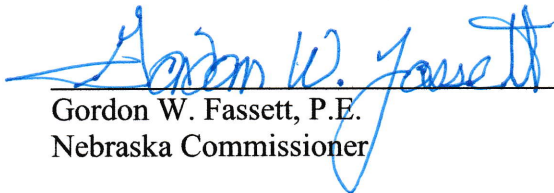
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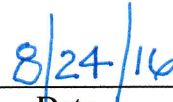
David Barfield, P.E.
Kansas Commissioner



Date



Gordon W. Fassett, P.E.
Nebraska Commissioner



Date