

1 SPECIAL MEETING OF THE
2 REPUBLICAN RIVER COMPACT ADMINISTRATION

3
4 July 9, 2013

5 10:04 a.m. Central Standard Time

6 Via Telephone

7 For Kansas:

8 Topeka Location

9 David Barfield, P.E., Commissioner & RRCA Chairman
10 Chris Beightel, Kansas DWR
Christopher M. Grunewald, KS Attorney General's office
Burke Griggs, Esquire, KS Attorney General's office

11 KBID Listening Location

12 Kenneth Nelson

13 Stockton Listening Location

14 Scott Ross, KS DWR water commissioner
Chelsea Erickson, KS DWR

15 For Colorado:

16 Denver Location

17 Dick Wolfe, P.E., Commissioner
Scott Steinbrecher, Esquire
18 Michael Sullivan, P.E., Deputy State Engineer
Ivan Franco

19 Wray RRWCD Listening Location

20 Deb Daniel, RRWCD
Dawn Webster, RRWCD

21 For Nebraska:

22 Lincoln Listening Location

23 Brian P. Dunningan, P.E., Commissioner
Justin Lavene, Nebraska Attorney General's office
24 Jim Schneider, P.E., NDNR
Jesse Bradley, NDNR
Don Blankenau, Esquire, Blankenau & Wilmoth LLP
25 Tom Riley, TFG
Robert Swanson, U.S. Geological Survey

McCook Listening Location

Aaron Thompson, USBR
 Steve Cappel, MRNRD
 Craig Scott, USBR
 Don Felker, FV ID and H&RW
 Bill Peck, USBR
 Richard Neel, Nebraska Farm Bureau
 Brad Edgerton, FCID

Red Cloud Listening Location

Tracy Smith, NBID
 Mike Delka, NBID

Curtis Listening Location

Daniel L. Smith, MRNRD
 Robert Merrihan, MRNRD

Imperial Listening Location

Nate Jenkins, URNRD
 Jasper Fanning, URNRD
 Fred Knapp, Nebraska Public Radio

PROCEEDINGS

CHAIRMAN BARFIELD: Good morning. My name is David Barfield. I am Commissioner for Kansas and chairman for the Republican River Compact Administration this year. I would call us to order for this special meeting of the Republican River Compact Administration on this date of July 9, 2013. The time is approximately 12:04 -- 10:04 -- excuse me -- a.m. central time; 9:04 a.m. mountain time.

We're holding this special meeting via conference call. This meeting was requested by the State of Nebraska to consider its Nebraska

1 Cooperative Republican Plate Enhancement
2 Augmentation Plan Proposal. So I guess let's start
3 by going around the conference call and having
4 introductions and ensure all of the listening
5 stations are on.

6 We provided notice of this meeting, and the
7 states have agreed to waive the 30-day meeting
8 notice requirement. So let me make introductions
9 for Kansas. First of all, with me here is Chris
10 Beightel of DWR staff; and with the attorney
11 general's office, Burke Griggs and Chris Grunewald.
12 I would go to the Stockton -- our Stockton field
13 office and ask that they introduce themselves and
14 whoever may be with them.

15 MR. ROSS: Scott Ross and Chelsea Erickson
16 are here.

17 CHAIRMAN BARFIELD: Okay. Is the Colby
18 listening station on?

19 (Pause.)

20 CHAIRMAN BARFIELD: Okay. Apparently not.
21 Is there anybody else on with Kansas? Anyone at
22 Kansas Bostwick Irrigation District?

23 MR. NELSON: This is Kenny Nelson and I'm
24 here from Kansas Bostwick.

25 CHAIRMAN BARFIELD: Okay. Anyone else on for

1 Kansas?

2 (Pause.)

3 CHAIRMAN BARFIELD: Okay. Thank you.
4 Commissioner Dunningan, for Nebraska?

5 CHAIRMAN DUNNIGAN: Thank you, Chairman
6 Barfield. And I would first of all like to thank
7 you for scheduling this special meeting. We'll go
8 around to the Nebraska listening stations. I'll
9 start off with Lincoln. And with me I have Robert
10 Swanson from the U.S. Geological Survey; Jim
11 Schneider and Jesse Bradley from DNR; Justin Lavene
12 from the attorney general's office; Don Blankenau,
13 outside counsel; and Tom Riley from the Flatwater
14 Group. I'll move to the Lower Republican. Is there
15 anybody on at the Lower Republican Natural Resources
16 District?

17 (Pause.)

18 CHAIRMAN DUNNIGAN: Tri-Basin Natural
19 Resources District?

20 (Pause.)

21 CHAIRMAN DUNNIGAN: Middle Republican Natural
22 Resources District?

23 DAN SMITH: Dan Smith and Robert Merrihan
24 with the Middle Republican NRD.

25 CHAIRMAN DUNNIGAN: Thank you, Dan. The

1 Upper Republican Natural Resources District?

2 MR. JENKINS: Nate Jenkins with the Upper
3 Republican NRD, and Jasper Fanning, and Fred Knapp
4 with Nebraska Public Radio.

5 CHAIRMAN DUNNIGAN: Thank you, Nate. With
6 the Bostwick -- Bostwick Irrigation District in Red
7 Cloud?

8 MR. SMITH: Yeah. This is Tracy Smith and
9 Mike Delka with Bostwick Irrigation District.

10 CHAIRMAN DUNNIGAN: Thank you, Tracy.
11 U. S. Bureau of Reclamation in McCook, Nebraska?

12 MR. THOMPSON: Good morning. It's Aaron
13 Thompson with Reclamation; Craig Scott and Bill Peck
14 also with Reclamation. We have Richard Neel with
15 the Nebraska Farm Bureau; Brad Edgerton with the
16 Frenchman-Cambridge Irrigation District; Don Felker
17 with Frenchman Valley and H & RW Irrigation
18 District; and Steve Cappel with Middle Republican
19 NRD. That's all.

20 CHAIRMAN DUNNIGAN: Thank you, Aaron. That
21 is it from the Nebraska Listening stations. Thank
22 you.

23 CHAIRMAN BARFIELD: Commis sioner Wolfe?

24 CHAIRMAN WOLFE: Good morning, Chairman
25 Barfield and Commis sioner Dunnigan. This is Dick

1 Wolfe, Colorado State Engineer and Commissioner for
2 Colorado on the Republican River Compact. Here with
3 me in Denver is Deputy State Engineer Mike Sullivan,
4 Scott Steinbrecher with the attorney general's
5 office, and Ivan Franco, who is the engineer advisor
6 on the Compact. And I think we have one other
7 listening station, the Republican River Water
8 Conservation District. And I will turn to Deb
9 Daniel to introduce herself and whoever else may be
10 there with her.

11 MS. DANIEL: Thank you, Dick. Again, my name
12 is Debra Daniel, general manager of the Republican
13 River Water Conservation District. And with me
14 today is Dawn Webster, and she's the assistant
15 general manager.

16 CHAIRMAN WOLFE: And I believe that's all
17 from Colorado. Is there anybody else who joined on
18 the line that I'm not aware?

19 (Pause.)

20 CHAIRMAN WOLFE: I'll turn it back to you,
21 Chairman Barfield.

22 CHAIRMAN BARFIELD: Thank you, Commissioner
23 Wolfe and Commissioner Dunningan. I would ask each
24 of the listening stations, if you could send your
25 sign-in sheet to Chelsea Erickson of our Stockton

1 field office, that would help us make sure the
2 record is complete of attendants. Again, since this
3 is being recorded and we're on the telephone, if
4 people could introduce themselves before making
5 statements, they would be helpful.

6 I distributed a proposed agenda for the
7 meeting. And now that introductions are complete,
8 the next item would be to consider modifications to
9 the agenda and to adopt the agenda. Are there any
10 suggested modifications to the agenda that we should
11 discuss?

12 CHAIRMAN WOLFE: None from Colorado. This is
13 Dick Wolfe.

14 CHAIRMAN DUNNIGAN: This is Brian Dunnigan.
15 None from Nebraska.

16 CHAIRMAN BARFIELD: Okay. Then I guess by
17 virtue of that we'll consider the agenda adopted as
18 proposed. The next item on the agenda then is
19 discussion of potential action regarding the
20 Nebraska Cooperative Republican Platte Enhancement
21 Augmentation Plan Proposal. I guess I would turn it
22 to you, Commissioner Dunnigan, to sort of lead us
23 through this piece of the agenda.

24 CHAIRMAN DUNNIGAN: Thank you, Chairman
25 Barfield. On June 27th we did have a workshop to

1 discuss the N-CORPE proposal, and subsequent to that
2 workshop we did send out a draft resolution that we
3 are going to take action on today. And at this time
4 I would ask if there are any additions or
5 clarifications to the draft resolution that was sent
6 out and will be the resolution before us this
7 morning.

8 (Pause.)

9 CHAIRMAN WOLFE: Commissioner Dunning, this
10 is Commissioner Wolfe. I had one question regarding
11 clarification on one of the whereases. And this is
12 in regards to the eighth "whereas" that starts, "The
13 measured pumping data collected in support of the
14 N-CORPE plan will be input into the RRCA groundwater
15 model in conformance with the current RRCA
16 accounting procedures for determining groundwater
17 computed beneficial consumptive use. And that same
18 measured data will be utilized to represent the
19 amount of discharge to Medicine Creek at the project
20 outfall."

21 It's not clear to me in there to the extent
22 how measurement devices will be utilized to
23 represent, of the total pumping, how much of that
24 will be discharged to Medicine Creek versus the
25 amount that will be in the pipeline that will also

1 deliver water to the South Platte. Could you
2 clarify that for me, please?

3 CHAIRMAN DUNNIGAN: Yes. Thank you,
4 Commissioner Wolfe. I will ask Jim Schneider to
5 clarify that point.

6 MR. SCHNEIDER: Okay. So this is Jim
7 Schneider. Thanks for that question. I think it's
8 a good clarification, and I think it's covered under
9 -- in the modifications to the accounting procedures
10 and reporting requirements on Page 42 of the
11 red-line that we provided. It's Page 72 of 104 for
12 the N-CORPE Augmentation Plan. We will provide, you
13 know, a full description of all measuring devices,
14 including the measuring devices that will be
15 utilized to distinguish water deliveries that are
16 sent to the Platte River versus water deliveries
17 that are sent to Medicine Creek.

18 So that will be fully provided when that
19 information is available and as any changes are made
20 to that information. So the intent is certainly to
21 obviously make it very clear that all of the
22 groundwater pumping at the project, whether it's for
23 the Republican or the Platte River water deliveries,
24 will be represented in the model and will use --
25 those measuring devices and any other measuring

1 devices that are necessary to distinguish where the
2 deliveries are made to provide that information in
3 the annual reporting that we will be conducting as
4 the project becomes operational.

5 CHAIRMAN WOLFE: Thank you for that
6 clarification. That's all I had in regards to
7 questions regarding the resolution.

8 CHAIRMAN DUNNIGAN: This is Commissioner
9 Dunnigan. Is there any other questions regarding
10 the resolution that was provided on July 3rd?

11 (Pause.)

12 CHAIRMAN BARFIELD: This is Commissioner
13 Barfield. I don't have any specific questions on
14 the resolution.

15 CHAIRMAN DUNNIGAN: This is Commissioner
16 Dunnigan. At this point then I would move to
17 approve the resolution that was provided on
18 July 3rd. We'll provide that as part of the record
19 for this meeting.

20 CHAIRMAN WOLFE: This is Commissioner Wolfe.
21 I'll second that motion.

22 CHAIRMAN BARFIELD: Okay. So it's -- thank
23 you. Dave Barfield here. It's been moved and
24 seconded that the resolution be adopted. Any
25 discussion?

1 (Pause.)

2 CHAIRMAN BARFIELD: Okay. So Nebraska has no
3 further discussion on the matter?

4 CHAIRMAN DUNNIGAN: No further discussion.

5 CHAIRMAN BARFIELD: All right. And Colorado?

6 CHAIRMAN WOLFE: None from Colorado.

7 CHAIRMAN BARFIELD: Well, I guess I will make
8 a statement then with -- regarding the proposal for
9 the record. The concepts related Nebraska's N-CORPE
10 proposal first came before the RRCA on the evening
11 before the special meeting of December 11, 2012, per
12 Nebraska's request at that special meeting. Kansas
13 responded to those concepts with a statement on what
14 it believes should be included in augmentation plans
15 for consideration by the RRCA in our letter of
16 January 14th, 2013.

17 Subsequently Nebraska provided an
18 augmentation plan related to the Rock Creek
19 Augmentation Project, which was subject to the
20 RRCA's consideration at a special meeting on March
21 8th, 2013. The Rock Creek Augmentation Project
22 failed to win Kansas' approval for reasons cited in
23 my letter of March 8th, 2013, with its attachments.
24 The Rock Creek Augmentation Project is now in
25 nonbinding arbitration. With minor exceptions,

1 Kansas' concern expressed in our correspondence on
2 augmentation generally and on Nebraska's Rock Creek
3 plan apply to the N-CORPE project as well.

4 Nebraska next approached the states about the
5 project proposal via its letter of June 11th, 2013,
6 where Nebraska provided its proposal and designated
7 the issue as fast track, requiring RRCA action
8 within 30 days. Again, for the record, the states
9 are involved in five other Republican River disputes
10 that require considerable attention from the state's
11 technical staff and legal staff. The months of
12 June and July have been particularly full.

13 First, there's the U.S. Supreme Court case
14 pending that focuses on Nebraska's claim regarding
15 the need to make changes to the accounting
16 procedures. The states are preparing for trial in
17 mid-August on that issue. There are also four
18 pending, nonbinding arbitrations. Nebraska
19 triggered arbitration of whether a plan it submitted
20 entitled it to a three-year compliance test during
21 water-short-year administrations. Kansas prepared
22 an expert report on this for the July 1 deadline.

23 Second, as noted above, Nebraska triggered
24 arbitration regarding its Rock Creek Augmentation
25 Project. Kansas prepared multiple expert reports

1 for the July 1 deadline.

2 Third, Colorado triggered arbitration
3 regarding his Colorado Compliance Pipeline Project.
4 During June and July Colorado and Kansas have
5 engaged in extensive technical legal -- technical
6 discussions during the settlement period established
7 in that arbitration schedule.

8 Fourth, Colorado triggered arbitration
9 regarding its proposed changes for Bonny modeling.
10 Again, in June and July Colorado and Kansas have
11 been engaged in extensive technical discussions
12 during the settlement period established in the
13 arbitration schedule.

14 As I noted and at the Nebraska workshop on
15 the N-CORPE proposal, Kansas' concerns about the
16 substance of the N-CORPE proposal and the process
17 Nebraska pursued in seeking approval are unchanged
18 from our past statements on augmentation. Those
19 technical concerns remain unaddressed in Nebraska's
20 current proposal. The scope of the N-CORPE project
21 heightens Kansas' concerns expressed -- expressed.

22 The pending Rock Creek arbitration seeks to
23 resolve these disputed issues. And no state should
24 be surprised that Kansas cannot agree to the N-CORPE
25 proposal in its current form. Kansas has acted in

1 good faith regarding the N-CORPE proposal. Our
2 substantive concerns with the augmentation plans are
3 well-documented, and Kansas has offered and
4 continues to be ready to work with the other states
5 to reach a mutually agreeable solution on the issue.

6 Kansas continues to believe that the project
7 can benefit both Kansas and Nebraska -- that a plan
8 that benefits both Kansas and Nebraska can be
9 approved, and this is best accomplished through
10 discussion and negotiation. I would ask that my
11 letter of March 8th and its attachments be made a
12 part of this record as well. Okay. That concludes
13 my remarks. Are we ready to take a vote on the
14 motion?

15 CHAIRMAN WOLFE: Chairman Barfield, do we
16 need to take any special action to agree to accept
17 your May 8th letter into the record? This is
18 Commissioner Wolfe.

19 CHAIRMAN BARFIELD: It's March 8th. Does
20 anybody have any objections to that?

21 CHAIRMAN WOLFE: Colorado has no objection

22 CHAIRMAN DUNNIGAN: Nebraska has no
23 objections.

24 CHAIRMAN BARFIELD: All right. Thank you.
25 Take a vote on the motion?

1 (Pause.)

2 CHAIRMAN BARFIELD: Okay. Hearing no
3 response I'll presume we are. Nebraska?

4 CHAIRMAN DUNNIGAN: Yes.

5 CHAIRMAN BARFIELD: Colorado?

6 CHAIRMAN WOLFE: Yes.

7 (Pause.)

8 CHAIRMAN BARFIELD: Date that has not has
9 been established at this juncture. And I would like
10 to obtain some input from -- from you fellow
11 commissioners on what would be a workable date. I
12 believe we have approved a change to our bylaws that
13 would allow us to have the meeting without --
14 without having to waive our regulations, through the
15 end of September. As I think everyone will know,
16 the month of August is when we --

17 CHAIRMAN DUNNIGAN: Chairman Barfield?

18 CHAIRMAN BARFIELD: Yes.

19 CHAIRMAN DUNNIGAN: If I may interrupt. This
20 is Commissioner Dunnigan. We did not hear the end
21 of that on Kansas' position on that vote.

22 CHAIRMAN WOLFE: Colorado --

23 CHAIRMAN DUNNIGAN: I don't know if the phone
24 was on mute or what, but we did not hear the vote.

25 CHAIRMAN BARFIELD: Okay. I'm sorry. Kansas

1 voted no.

2 CHAIRMAN DUNNIGAN: Thank you.

3 CHAIRMAN BARFIELD: Okay. I think -- did you
4 hear it or is there some problem with the phone?

5 CHAIRMAN WOLFE: Colorado did not hear that
6 either. And I don't know, Chairman Barfield, that
7 you had made any other remarks after your no
8 decision or not that you wanted to be part of the
9 record. But it did cut out for a period of time
10 there. And we did not hear it as well.

11 CHAIRMAN BARFIELD: Okay. Thank you,
12 Commissioner Dunnigan. And we'll -- I apologize for
13 that. No. I made my statement before the vote and
14 I voted no, and that was all that I said on that
15 point. I guess then, having you not heard that, I'd
16 invite -- if there's any additional remarks that you
17 would like to put on the record, I certainly invite
18 that.

19 CHAIRMAN DUNNIGAN: This is Commissioner
20 Dunnigan. I would just like the record to reflect
21 how important we think these projects are, not only
22 for Nebraska, but for Kansas water-users also. And
23 we feel that they are very important. And as part
24 of our commitment to compliance with the Compact and
25 to make waters available for Kansas use, we think

1 these are very important projects.

2 CHAIRMAN BARFIELD: Thank you, Commissioner
3 Dunningan. Again, Commissioner Wolfe, anything else?

4 CHAIRMAN WOLFE: No further comments.

5 CHAIRMAN BARFIELD: All right. Before I move
6 then to Agenda Item No. 4, I'd ask the court
7 reporter if you're having any difficulty with
8 hearing what's going on.

9 COURT REPORTER: No. I had the same problem
10 as the other two commissioners where there was a
11 short time there where I didn't hear your vote. But
12 since then everything has been fine.

13 CHAIRMAN BARFIELD: Very good. Thank you.
14 Well, I think we've got a complete record now, so I
15 will then move us to the discussion of the date for
16 the 2013 annual meeting. And the month of August is
17 -- has quite a number of commitments for all of us
18 with respect to the preparations and participation
19 in the segment of trial in Portland, Maine, and then
20 an arbitration trial with respect to the two
21 Nebraska issues.

22 And I guess I would like to suggest and poll
23 the commissioners with respect to a couple dates in
24 September -- in the middle of September for
25 potential meeting of the RRCA to see if those -- one

1 of those might be acceptable to the commission to
2 meet. And specifically I would offer --
3 traditionally we have a workshop the afternoon
4 before the actual meeting, and then the annual
5 meeting then the following morning.

6 We're proposing to host this meeting in
7 Colby, Kansas. And I would tenure the options of
8 either the afternoon of September 11th for the
9 workshop and the morning of September 12th for the
10 annual meeting, or September 12th afternoon for the
11 workshop and September 13th for the annual meeting.
12 Or the following week we could do September -- the
13 afternoon of September 16th -- hold on just a
14 second. I'm getting some signals here.

15 (Pause.)

16 CHAIRMAN BARFIELD: Okay. I'm back. The
17 afternoon of Monday, September 16th, for the
18 workshop and the -- the morning of September 17th
19 for the annual meeting, or the following pair of
20 days, the afternoon of the 17th for the workshop and
21 the 18th for the annual meeting. I don't know if we
22 have to -- to decide on this today, but I guess does
23 the middle of September -- is that a workable time
24 frame, do you believe, given the other commitments
25 of the -- of all of us?

1 CHAIRMAN WOLFE: Chairman Barfield, this is
2 Commissioner Wolfe. All of those dates work for
3 Colorado. Our preference would be to have them
4 either the 11th, 12th, or 13th, just to allow us
5 ample opportunity for preparation for our
6 arbitration that's set at the end of the month.

7 CHAIRMAN DUNNIGAN: Chairman Barfield, this
8 is Commissioner Dunnigan. We are open on those
9 dates and would prefer September 11th and 12th for
10 the meeting.

11 CHAIRMAN BARFIELD: Very good. Well, why
12 don't we just plan on September -- the afternoon of
13 September 11th for the workshop working session and
14 then the morning of September 12th for the annual
15 meeting. Very good. We'll proceed along those
16 lines. And I guess with that I would take a motion
17 for adjournment.

18 CHAIRMAN WOLFE: So moved, Colorado.

19 CHAIRMAN DUNNIGAN: Second, Nebraska.

20 CHAIRMAN BARFIELD: All right. I'll take it
21 with that and my concurrence that we are adjourned.
22 Thank you very much.

23 CHAIRMAN DUNNIGAN: Thank you.

24 CHAIRMAN WOLFE: Thank you.

25 * * * CONCLUSION OF MEETING AT 10:28 A.M. * * *

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C E R T I F I C A T E

I, Coleen F. Boxberger, Registered Professional Reporter, do hereby certify the above and foregoing teleconference was taken at the time and place as specified; that the same was taken before myself in shorthand and later transcribed and extended into typewritten form to the best of my ability, and is a true and correct extension hereof;

Coleen F. Boxberger, R.P.R.
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