



December 15, 2022

Mr. Thomas E. Riley, P.E., Director  
Nebraska Department of Natural Resources  
245 Fallbrook Road, Suite 201  
Lincoln, Nebraska 68521-6729

Subject: Water for South Platte River Compact, Article VI

SENT BY E-MAIL ONLY

Dear Tom,

I have received your December 12, 2022 letter. In that letter “The State of Nebraska [...] requests administration of junior water appropriations in Colorado to satisfy her December 17, 1921 right of 500 cfrs (sic) pursuant to Article VI of the South Platte River Compact for the duration of the non-irrigation season (October 15th through April 1st).”

In broadly requesting administration of junior appropriations in Colorado, your letter does not limit the request to any specific location or section of the South Platte River. As you know, the South Platte River Compact (“Compact”) divides the river into two Sections—Upper and Lower. The Upper Section runs from the headwaters to the South Platte River’s intersection with the west boundary of Washington County, which is a short distance downstream of the Town of Brush, Colorado. The Lower Section extends from the west boundary of Washington County to the stateline. Compact, Article I, paragraphs 3 and 4.

Under the Compact, Nebraska has agreed that it has no “basis for any claim to water necessary to supply all present and future appropriations in the Upper Section of the South Platte River.” Compact, Article VI, paragraph 2.(b). Therefore, I must deny your request to the extent it asks for administration of junior water appropriations in the Upper Section. Building the Perkins County Canal would not entitle Nebraska to water from the Upper Section.

To the extent your letter requests administration of junior water appropriations in the Lower Section, I must also deny your request. Article VI, paragraph 2, provides that *the canal* may divert the net flow “which may remain after supplying all appropriations from the Lower Section perfected prior to the seventeenth day of December, 1921, and after supplying the additional future appropriations in the Lower Section for the benefit of which a prior and preferred use of thirty-five thousand acre-feet is reserved” for Colorado, among additional limitations in the Compact. Because Nebraska has not constructed the Perkins County Canal, there is no basis for Colorado to administer junior water appropriations in the Lower Section



of the South Platte River. The Compact further provides that the diversion by the canal is “for irrigation of lands in Nebraska.” Article VI. Even if Nebraska had constructed the Perkins County Canal, Nebraska has not demonstrated that administration would be to satisfy irrigation of lands in Nebraska.

For the reasons contained in this letter, I hereby deny your request.

Sincerely,



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Kevin G. Rein  
State Engineer, Director

