



November 25, 2024

Transmission via email; Jesse.Bradley@Nebraska.gov

Jesse Bradley
Nebraska DNR
245 Fallbrook Blvd
Lincoln, NE 68521

Subject: Tom Riley's letter of July 12, 2024 about plans for augmentation

Dear Jesse:

This letter responds to a July 12, 2024 letter sent by Tom Riley prior to his departure from Nebraska DNR that included several questions regarding plans for augmentation that allow junior diversions which do not diminish flows Nebraska is entitled to under Article IV of the South Platte Compact.

In Colorado, plans for augmentation allow water users who are not in priority to divert so long as they will not injuriously affect those entitled to use water. Generally this means providing replacement water for junior depletions to the stream above unfulfilled senior water users (located downstream of the junior depletion). The operations of plans for augmentation and requirements to submit accounting are decreed in Colorado water courts. Those decrees, submitted accounting, water right appropriation dates, and DWR's diversion records are publicly available online.

In addition, all diversions of water in the Lower Section have measuring devices and most major diversions are also equipped with continuous recording devices and telemetry. This allows for near real time visibility of the diversions and the priority of unfulfilled water rights on the river. There are several methods to make water users aware of the seniority of a call in the lower section of the river including:

- Online Administrative Call Analysis tool
- Subscriber list email notifications
- Direct communication from staff

Tom's letter requested that Colorado review the findings of the attached report. A critical misunderstanding in the report is that when Colorado's records show a call for



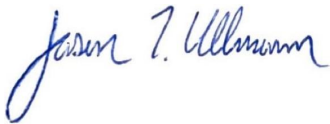
the June 14, 1897 priority at the stateline ("Compact Call"), that is typically not the most senior call in the lower section of the river. It is common to have a more senior call in effect, such as the Harmony Ditch #1 May 3, 1897 water right. This senior right is entitled to divert up to 252 cfs, even if there is not 120 cfs at the stateline and a Compact Call is active. Any water right senior to the compact (appropriation date prior to June 14, 1897) can legally divert streamflow, including the replacement water from an augmentation plan operating upstream of that senior right within the Lower Section of the river. In other words, replacement water need not be delivered to the state line if there is a senior water user entitled to such replacement, even if the flow at the stateline is less than 120 cfs during the summer season (April 1 - October 15). Of the five plans for augmentation reviewed in Nebraska's report, only the Condon Plan has depletions downstream of the Harmony Ditch #1 point of diversion.

Because there has not been a diminution in the state line flows in the river subject to Article IV, Colorado has not needed to take any enforcement actions. In fact, our review of data for each of the last 10 years indicates that Colorado has provided over 100 acre-feet each month of excess replacement downstream of the Harmony #1 diversion during the summer season (April 1 - October 15). This is water in excess of what is necessary to replace any diminution of flow caused by Colorado's junior rights during a compact call at the stateline when flows are below 120 cfs in the Lower Section of the river, generally resulting in a windfall to Nebraska.

A review of GIS data available at dnr.nebraska.gov indicates that there are a number of wells near Lodgepole Creek and the South Platte River in Nebraska. It would be helpful to obtain information from Nebraska about impacts from these groundwater uses in Nebraska as these wells may deplete flows that would otherwise be available to both Colorado and Nebraska water users.

I hope this letter provides a better understanding of Colorado's administration process per the request of Tom Riley.

Sincerely,

A handwritten signature in blue ink that reads "Jason T. Ullmann". The signature is fluid and cursive, with the first name "Jason" and last name "Ullmann" clearly legible.

Jason Ullmann, P.E.
State Engineer/Director

ecc: Tracy Kosloff, Corey Deangelis