

NEBRASKA

Good Life. Great Water.

DEPT. OF NATURAL RESOURCES

February 28, 2025

Jason Ullmann
Department of Natural Resources
1313 Sherman St., Suite 821
Denver, CO 80203



Jim Pillen, Governor

Dear Jason:

I am in receipt of your letter of November 25, 2024, citing Nebraska's questions about Colorado's non-compliance with Article IV of the South Platte River Compact (Nebraska Department of Natural Resources letter dated July 12, 2024). Your correspondence does not address Nebraska's basic question: How do you know there have not been any deficiencies at the Interstate Station when the augmentation plans on which Colorado relies fail to incorporate the Compact's daily measurement requirement and its further requirement that any deficiencies are made up within 72 hours?

Your letter noted that many augmentation diversions are equipped with continuous recording devices. You mention that these devices allow for near real time visibility of the diversions. The plans that Nebraska identified do not contain any requirements to report in real time. It appears that all compliance with these plans is measured on a monthly – not daily – timestep. More importantly, to my question above, how are these plans monitored and who is responsible. Based on your response, it is not clear if the Colorado Department of Water Resources or the Colorado water courts are evaluating the efficacy of junior depletions and their so-called replacement water. These plans are reported long after the impact of their diversions, so that actual performance does not seem to be based on real time data. I would appreciate clarification on how you can ensure that the water to which Nebraska is entitled is arriving when and where the Compact requires, consistent with the self-executing terms of the Compact.

In addition, I want to make clear our intentions with regard to Nebraska's entitlements pursuant to Article VI of the Compact. I know many of our conversations with Colorado officials occurred prior to you taking your current position last April. So, to the extent there remains any confusion about Nebraska's goals for the project I would like to be very clear. Our goal is to limit or reverse the continued diminution of South Platte River flows at the Nebraska state line

Jesse Bradley, P.G., Interim Director

Department of Natural Resources

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consistent with Nebraska's full exercise of its irrigation season and non-irrigation season Compact entitlements.

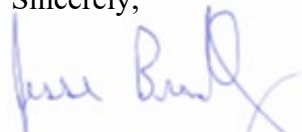
I realize that construction of the Perkins County Canal, and Colorado's administration of Nebraska's Compact entitlements, may create some disruption for Colorado water users. I also understand that it may impact Colorado's ability to comply with its future Endangered Species Act obligations. However, it is my hope that we can come to some agreement on the construction and administration of the Perkins County Canal that would ultimately support efforts not only for all of our water users but to also maintain the Platte River Recovery and Implementation Program into the future.

This is why Nebraska has been, and remains, willing to explore any alternative Colorado might propose. However, as you know, Nebraska inquired as early as 2022 whether Colorado would be willing to administer Nebraska's Compact right in the absence of a canal, and Colorado said no. We continue to ask, and are waiting for a response, as to whether Colorado would agree, pursuant to the terms of the Compact, to relocate the diversion point closer to the Colorado/Nebraska State line to minimize the effects on Colorado landowners.

As you are aware, Nebraska has made good faith offers to purchase land from landowners in the vicinity of the planned Canal diversion. We await responses from those landowners, and we hope for amicable sales. The window for cooperative State action is closing, given that we must move forward soon to secure the required lands. If Colorado has any alternatives it wishes to propose, they are welcome and will be seriously considered, but those alternatives must be provided prior to mid-April. In the absence of some alternative identified by Colorado, we will continue with our current plans of building a diversion point near Ovid and conducting water via a canal into Nebraska.

In closing, I just want to assure you that this project is not politically motivated as described by some in Colorado. In Nebraska, it is viewed as one of the most critical water supply projects ever undertaken in the state. I trust that everyone in Colorado is now focused on a future that involves the Canal, and I look forward to working with you as we advance this project.

Sincerely,



Jesse Bradley, P.G., Interim Director
Nebraska Department of Natural Resources
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