

The Colorado Proposed Actions –

Why Nebraska Must take Actions to Preserve and Protect its Compact Entitlements



2016 South Platte Basin Implementation Plan Brochure:
<https://southplattebasin.com/wp-content/uploads/2016/04/South-Platte-Basin-Implementation-Plan-Brochure.pdf>

According to Colorado’s own State Water Plan, the South Platte and Denver Metro Basins are projected to grow from approximately 3.5 million people in the year 2008 to about 6 million people by the year 2050. This is driving Colorado to address a projected annual water supply shortfall of roughly 200,000 acre-feet for municipal and industrial uses and over 400,000 acre-feet per year for agricultural uses in the South Platte Basin.¹

Colorado has historically turned to water supplies from the Colorado River Basin to meet demands, by transferring water from that basin to the South Platte River. Those sources of water are becoming increasingly scarce, so Colorado’s Legislature has been supporting efforts to determine what can be done to ensure no “excess” South

Platte River water passes into Nebraska. Colorado considers Nebraska’s Article VI water to be available for this purpose since the Perkins County Canal was never built. This “excess” water is part of the water Nebraska will divert under Article VI of the Compact to ensure Colorado does not take what is reserved to Nebraska under the Compact. The project is thus critical to Nebraska’s Compact enforcement efforts.

In 2016 the Colorado Legislature passed House Bill 16-1256, titled “South Platte Storage Study” (SPSS) to identify water storage options along the lower South Platte River to capture flows leaving Colorado **“in excess of the minimum legally required amounts.”** The results of Colorado’s analysis², shown in Table 1-1, indicates that 293,000 acre-feet of the current flow (331,000 acre-feet) was “water delivered to Nebraska in excess of the Compact”. Colorado’s apparent interpretation of the Compact is that without the Perkins County Canal Colorado is allowed to **reduce the South Platte River flows by approximately 90%.**

Table 1-1. Historical Annual Flow for 1996-2015 at Nebraska State Line

Statistic	Physical Water Leaving Colorado (Julesburg Gage)	Water Delivered to Nebraska in Excess of the Compact ⁽¹⁾⁽²⁾
Annual Median (ac-ft/yr)	331,000	293,000
Annual Average (ac-ft/yr)	436,000	397,000
Minimum Year (ac-ft/yr)	29,000	10,000
Maximum Year (ac-ft/yr)	1,957,000	1,904,000
Total for 20-yr Period 1996-2015 (ac-ft)	8,728,000	7,939,000

⁽¹⁾ Storable flow Julesburg gage

⁽²⁾ Future environmental flow obligations could reduce legally available water.

¹ “Business as Usual” projections in Tables 2 and 3 of the January 2022 Draft South Platte Basin Implementation Plan: <https://engagecwcb.org/13137/widgets/39803/documents/24420>

² The Final Report for HB16-1256 can be found here: https://southplattebasin.com/wp-content/uploads/2016/04/South-Platte-Storage-Study_FINAL-REPORT.pdf

Section 7. Future Basin Projects

The BRTs, along with other stakeholders, identified projects that will further progress toward achieving basin goals and meeting future water needs. The list of projects is managed in a database that was initially developed prior to the 2015 BIP and was updated in 2020 during the BIP update. The purpose of the projects database is to keep a record of the projects considered by the roundtables through the BIP process, both in the past and into the future. Table 9 provides a snapshot summary of the projects database at the conclusion of the current BIP update process.

Table 9. Snapshot Summary of Basin Projects

Total Projects	282
New projects added in 2020	185
Projects completed	17
Projects being implemented	81
Projects identified as meeting M&I needs	178
Projects identified as meeting Ag needs	44
Projects identified as meeting E&R needs	132
Projects identified as meeting Administrative needs	15
Tier 1 projects	39
Tier 2 projects	53
Tier 3 projects	135
Tier 4 projects	55
TOTAL COST OF ALL PROJECTS	\$9,870,000,000
PERCENTAGE OF PROJECTS WITH AN ESTIMATED COST	56%

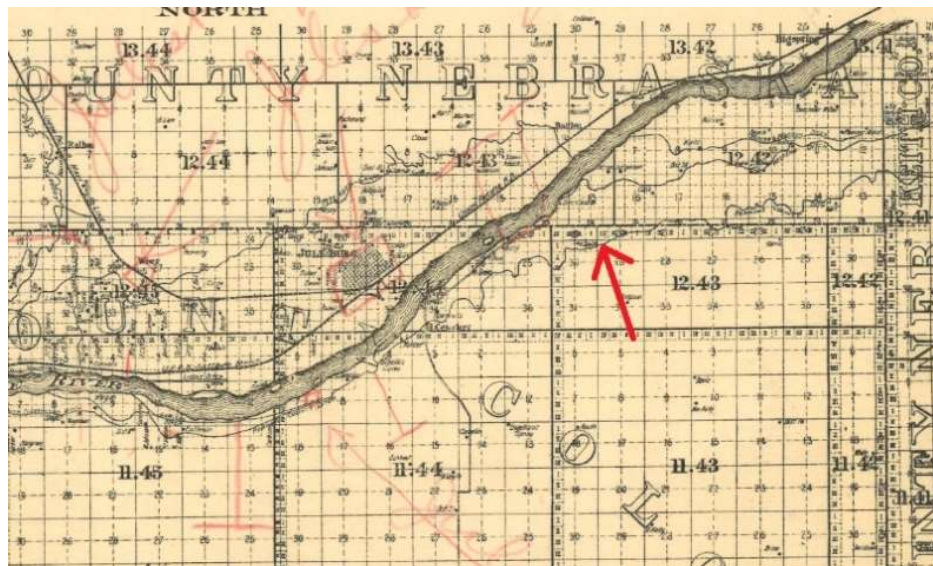
Projects that are concepts, planned, or are being implemented were the basis for the above data summary (with the exception of data specifically describing projects completed or being implemented)

More recently, on October 13, 2021, Colorado released updated **Basin Implementation Plan (BIP)**³ documents for public comment, including a Volume 1 document⁴ for the South Platte and Metro Basins. The report listed 282 total projects, including 81 being implemented and 17 that were already completed, that “will further progress toward achieving basin goals and meeting future water needs”. The total estimated costs for project implementation totaled **over \$9.8 Billion**. Several projects included in the HB16-1256 study, including Fremont Butte Reservoir, a proposed 70,000 acre-foot reservoir, also appear in the BIP project list.⁵

Nebraska’s pursuit of the diversion contemplated under Article VI will require Colorado to comply with the additional requirements during the non-irrigation season, which would curtail Colorado water rights in the lower South Platte River developed after December 17, 1921. Therefore, Nebraska’s construction of a diversion project

may also impact existing Colorado water rights, providing additional water supplies to Nebraska, while also limiting newer Colorado water rights from further eroding flows into Nebraska.

Nebraska welcomes further discussions with Colorado to understand past and ongoing plans for water development in the South Platte River Basin to ensure these protections are afforded to Nebraska water users.



1902 Perkins County Canal Route, Source: History Nebraska

³ <https://engagecwcb.org/bip-public-comment-period>
⁴ <https://engagecwcb.org/13137/widgets/39803/documents/24420>
⁵ <https://cwcb-projects.secure.force.com/DNRBasinIdentifiedProjects>