

**RESOLUTION BY THE REPUBLICAN RIVER COMPACT ADMINISTRATION
REGARDING APPROVAL OF COLORADO'S AUGMENTATION PLAN AND
RELATED ACCOUNTING PROCEDURES SUBMITTED UNDER SUBSECTION
III.B.1.k OF THE FINAL SETTLEMENT STIPULATION**

August 12, 2009

Whereas, the States of Kansas, Nebraska, and Colorado entered into a Final Settlement Stipulation ("FSS") as of December 15, 2002, to resolve pending litigation in the United States Supreme Court regarding the Republican River Compact ("Compact") in the case of *Kansas v. Nebraska and Colorado*, No. 126 Original;

Whereas, the FSS was approved by the United States Supreme Court on May 19, 2003;

Whereas, the State of Colorado's Computed Beneficial Consumptive Use of the waters of the Republican River Basin exceeded Colorado's Compact Allocation using the five-year running average to determine Compact compliance from 2003 through 2007, as provided in Subsection IV.D of the FSS;

Whereas, the Republican River Water Conservation District is a water conservation district created by Colorado statute to assist the State of Colorado to comply with the Compact;

Whereas, the Republican River Water Conservation District, acting by and through its Water Activity Enterprise ("RRWCD WAE"), has contracted to acquire fifteen Compact Compliance Wells in the Republican River Basin in Colorado for the sole purpose of offsetting stream depletions in order to comply with the State of Colorado's Compact Allocations;

Whereas, the RRWCD WAE has contracted to purchase groundwater rights in the Republican River Basin within Colorado and proposes to pump the historical consumptive use of all or some of these water rights from the Compact Compliance Wells into a pipeline and deliver that water into the North Fork of the Republican River near the Colorado/Nebraska State Line to offset stream depletions in order to comply with Colorado's Compact Allocations ("Colorado Compact Compliance Pipeline");

Whereas, the States of Kansas, Nebraska, and Colorado adopted a Moratorium on New Wells in Subsection III.A of the FSS, with certain exceptions set forth in subsection III.B of the FSS;

Whereas, Subsection III.B.1.k of the FSS provides that the Moratorium shall not apply to wells acquired or constructed by a State for the sole purpose of offsetting stream depletions in order to

comply with its Compact Allocations, provided that such wells shall not cause any new net depletion to stream flow either annually or long term;

Whereas, Subsection III.B.1.k of the FSS further provides that augmentation plans and related accounting procedures submitted under this Subsection III.B.1.k shall be approved by the Republican River Compact Administration (“RRCA”) prior to implementation;

Whereas, Subsection I.F of the FSS also provides that: “The RRCA may modify the RRCA Accounting Procedures, or any portion thereof, in any manner consistent with the Compact and this Stipulation;” and

Whereas, the State of Colorado and the RRWCD WAE have submitted an augmentation plan and related accounting procedures to account for water delivered to the North Fork of the Republican River for the purpose of offsetting stream depletions in order to comply with Colorado’s Compact Allocations.

Now, therefore, it is hereby resolved that the RRCA approves the augmentation plan and the related accounting procedures submitted by the State of Colorado and the RRWCD WAE under Subsection III.B.1.k of the FSS, subject to the terms and conditions set forth herein. The augmentation plan is described in the application submitted by the State of Colorado and the RRWCD WAE, which is attached hereto as Exhibit 1. The related accounting procedures are included in the revised RRCA Accounting Procedures and Reporting Requirements (“revised RRCA Accounting Procedures”), which are attached hereto as Exhibit 2. This approval of the augmentation plan and the related accounting procedures shall be subject to the following terms and conditions:

1. The average annual historical consumptive use of the groundwater rights that will be diverted at the Compact Compliance Wells shall be as determined by the Colorado Ground Water Commission pursuant to its rules and regulations, provided that the average annual historical consumptive use of the groundwater rights listed on Exhibit 3 shall not exceed the 1998-2007 average annual amounts shown on Exhibit 3. Annual diversions during any calendar year under the groundwater rights included in the augmentation plan shall be limited to the total average annual historical consumptive use of the rights, except as provided in paragraph 3 below.
2. Net depletions from the Colorado Compact Compliance Wells shall be computed by the RRCA Groundwater Model and included in Colorado’s Computed Beneficial Consumptive Use of groundwater pursuant to paragraph III.D.1 of the revised RRCA Accounting Procedures. Groundwater pumping from the Compact Compliance Wells shall be measured by totalizing flow meters, and the measured groundwater pumping from such wells shall be included in the base “run” of the RRCA Groundwater Model in accordance with paragraph III.D.1 of the revised RRCA Accounting Procedures.

3. Diversions from any individual Compact Compliance Well shall be limited to no more than 2,500 acre feet per year. Banking of groundwater shall be permitted in accordance with the rules and regulations of the Colorado Ground Water Commission, subject to the limit on Augmentation Water Supply Credit in paragraph 4 below.
4. The Augmentation Water Supply Credit due to deliveries from the Colorado Compact Compliance Pipeline that will be applied against the Computed Beneficial Consumptive Use of water to offset stream depletions in order to comply with Colorado's Compact Allocations during any calendar year shall be limited as follows:

Calculation of Projected Augmentation Water Supply Delivery to Determine the Limit on Augmentation Water Supply Credit

Each year, using the procedures described below, Colorado will determine the Projected Augmentation Water Supply Delivery ("Projected Delivery") for the upcoming accounting year (the "subject accounting year") to estimate the volume of Augmentation Water Supply that will be delivered from the Colorado Compact Compliance Pipeline during the subject accounting year, with a minimum annual delivery of 4,000 acre-feet. The RRWCD WAE will begin deliveries from the Colorado Compact Compliance Pipeline during the subject accounting year based on the Projected Delivery, but actual deliveries will be adjusted during the course of the year based on hydrologic and climatic conditions and the need to offset stream depletions in order to comply with Colorado's Compact Allocations, subject to the limit on the Augmentation Water Supply Credit set forth below.

The steps to determine the Projected Delivery and the limit on the Augmentation Water Supply Credit are as follows:

- A. Step 1. By March 31st of each year, Colorado will calculate Colorado's total Allocation and Colorado's Computed Beneficial Consumptive Use ("CBCU") for the previous accounting year using the procedures described in the revised RRCA Accounting Procedures, but using preliminary data where necessary.
- B. Step 2. Colorado will determine the Projected Delivery, which shall be the largest annual deficit or difference between Colorado's total annual Allocation and Colorado's CBCU during the 10 accounting years immediately preceding the subject accounting year; provided, however, that accounting years in which Colorado's total annual Allocation exceeds Colorado's CBCU shall not be used in determining the Projected Delivery.
- C. Step 3. The Colorado RRCA Member shall provide notice of the Projected Delivery determination to the Kansas and Nebraska RRCA Members by April 1 of each year.

- D. Step 4. The Augmentation Water Supply Credit for the subject accounting year shall be limited to the Projected Delivery plus 4,000 acre-feet, or 140% of the Projected Delivery, whichever is greater.

Examples of how this limitation shall be applied are attached as Exhibit 4.

5. The preliminary design for the Colorado Compact Compliance Pipeline is described in the application attached hereto as Exhibit 1. The State of Colorado and the RRWCD WAE shall submit the final design for the Colorado Compact Compliance Pipeline to the RRCA and any changes to the final design after the Colorado Compact Compliance Pipeline has been constructed. If the final design or changes to the final design of the Colorado Compact Compliance Pipeline as constructed differ from the preliminary design in a way that would materially change the location of the Compact Compliance Wells or the river outlet structure, the RRCA may modify the terms and conditions of this approval.
6. The RRWCD WAE may acquire additional groundwater rights to be pumped through the Compact Compliance Wells upon the terms and conditions of this resolution. The State of Colorado and the RRWCD WAE shall file a notice with the RRCA identifying the additional groundwater rights and the historical consumptive use of the groundwater rights. The RRCA members shall have sixty days from the date the notice is given to review the information. If no objection is made within sixty days from the date the notice is given, the additional groundwater rights may be pumped through the Compact Compliance Wells upon the terms and conditions of this resolution. If an objection is made by any RRCA member, the objection shall be given in writing to the RRWCD WAE within 60 days from the date the notice is given and the notice shall be treated as an application for approval of an augmentation plan and related accounting procedures under Subsection III.B.1.k of the FSS and the State of Colorado and the RRWCD WAE may submit any additional information to address the objection.
7. The approval of this augmentation plan and the related accounting procedures shall not govern the approval of any future proposed augmentation plan and related accounting procedures submitted by any other State under Subsection III.B.1.k of the FSS.
8. The approval of this augmentation plan and the related accounting procedures shall not waive any State's rights to seek damages from any other State for violations of the Compact or the FSS subsequent to December 15, 2002.
9. Except for the approval of the augmentation plan and the related accounting procedures as provided herein, nothing in this Resolution shall relieve the State of Colorado from complying with the obligations set forth in the Compact or FSS.

Approved by the RRCA this 12th day of August, 2009.

Brian Dunnigan, P.E.
Nebraska Member
Chairman, RRCA

date

David Barfield, P.E.
Kansas Member

date

Dick Wolfe, P.E.
Colorado Member

date