



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

February 22, 2013

Brian Dunnigan, P. E.
Nebraska Commissioner
Republican River Compact Administration
Nebraska Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676

David W. Barfield, P.E.
Kansas Commissioner
Republican River Compact Administration
Division of Water Resources
Kansas Department of Agriculture
109 SW 9th Street, 2nd Floor
Topeka, Kansas 66612-1283

RE: Nebraska's Proposed Alternative Water Short Year Administration Plan

Dear Commissioners Dunnigan and Barfield,

I have received Commissioner Dunnigan's February 8, 2013 letter invoking non-binding fast-track arbitration regarding Nebraska's proposed Alternative Water Short Year Administration Plan (the "Plan"). I have also received Commissioner Barfield's response dated February 20, 2013.

Colorado does not plan to amend the scope of the dispute. In accordance with section VII B2 of the FSS, and in addition to those Nebraska has already submitted, Colorado proposes the following arbitrators:

1. Jeffrey C. Fereday - <http://www.givenspursley.com/staff/attorneys/jeffrey-c-fereday-partner->
2. Martha O. Pagel - <http://www.schwabe.com/showattorney.aspx?Show=9359>
3. Hon. O. John Kuenhold - Judge Kuenhold was appointed as a Colorado District Court Judge in 1981 and was appointed Chief Judge of Colorado's Twelfth Judicial District and Water Judge for Water Division 3 (Rio Grande Basin) in 2004. He served in those capacities until his retirement in October 2011. He currently serves as a senior judge on special

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assignment to the State Court Administrator. His last judicial performance evaluation can be found here: <http://www.coloradojudicialperformance.gov/retention.cfm?ret=150>

Colorado encourages the States to explore settlement during the arbitration. However, Colorado does not agree that arbitration of the Plan is premature. The States have had sufficient time to review the Plan. The substance of the Plan rests on Nebraska's implementation of the third-generation Integrated Management Plans ("IMPs"). Nebraska first presented those in November, 2010. In July, 2012, Nebraska submitted to the RRCA the Plan incorporating those IMPs. Kansas challenged the sufficiency of the third-generation IMPs during trial in *Kansas v. Nebraska & Colorado, Orig. No. 126*. Two months after trial, the RRCA voted whether to approve the Plan. Further delay and resubmission to the RRCA would only frustrate Nebraska's purpose.

Nebraska needs some plan for the upcoming year, which is currently projected to be a Water-Short Year. Colorado and Kansas should consider Nebraska's Plan in good faith so that Nebraska might implement it during the upcoming year. This is especially true considering that the Plan is only a temporary accommodation. Even if the Plan is approved, that approval will expire three years later. At that time, if Water Short Year conditions again are projected, Nebraska could resubmit the same plan for approval, or submit a different plan.

Sincerely,



Dick Wolfe, P.E.
Colorado Commissioner, RRCA
State Engineer
Colorado Division of Water Resources

cc: Scott Steinbrecher