

No. \_\_, Original

---

---

**In the Supreme Court of the United States**

---

STATE OF NEBRASKA,  
*Plaintiff,*

v.

STATE OF COLORADO,  
*Defendant.*

---

**BILL OF COMPLAINT**

---

---

MICHAEL T. HILGERS  
Attorney General of Nebraska  
CODY S. BARNETT  
Solicitor General

JUSTIN D. LAVENE  
Assistant Attorney General  
*Counsel of Record*

NEBRASKA DEPARTMENT  
OF JUSTICE  
1445 K Street, Room 2115  
Lincoln, Nebraska 68508  
(402) 471-2683  
justin.lavene@nebraska.gov

THOMAS R. WILMOTH  
DONALD G. BLANKENAU  
KENNON G. MEYER  
Special Assistant  
Attorneys General  
BLANKENAU WILMOTH  
JARECKE LLP  
2900 South 70th Street  
Suite 150  
Lincoln, Nebraska 68506

*Counsel for State of  
Nebraska*

The State of Nebraska, by and through its Attorney General, Michael T. Hilgers, brings this suit against the State of Colorado, stating as follows:

1. Water from the South Platte River is one of Nebraska's most valuable resources. To ensure access to this resource in perpetuity, Nebraska entered into an agreement over a century ago with Colorado: The South Platte River Compact. Pub. L. No. 69-37, 44 Stat. 195 (1926) (signed April 27, 1923) (the "Compact"). A copy of the Compact is attached as an Appendix to this Bill of Complaint.

2. Colorado has breached that Compact, and its actions threaten to drastically curtail Nebraska's access to water from the South Platte River. These breaches have harmed Nebraska and pose a significant, ongoing threat to Nebraska, from its agricultural economy to the water security of its major population centers. Indeed, Nebraska's Western Irrigation District, a major beneficiary of rights granted under the Compact, was recently forced to shut off the majority of its surface water irrigation due to lack of supply from the South Platte River.

3. Colorado threatens Nebraska's water supply of South Platte River water in at least two ways. First, Colorado allows unlawful water diversions that have deprived Nebraska of as much as 1.3 million acre-feet of water—more than ten times what D.C. Water pumps for its 700,000 Washington, D.C.-based residents in an entire year. Second, Colorado is blocking Nebraska's efforts to construct a

canal contemplated by the Compact—the Perkins County Canal (or the South Divide Canal)—while simultaneously arguing that Nebraska cannot access certain water without completion of the canal.

4. To this day, Colorado and Nebraska are at an impasse in Nebraska’s attempts to resolve conflicts between the parties about the key terms of the Compact.

5. This Court has original and exclusive jurisdiction pursuant to Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. § 1251(a) because the litigants in this controversy are two sovereign states: Plaintiff State of Nebraska and Defendant State of Colorado.

6. This case presents significant issues that only this Court can resolve. Among other things, this case involves an exceptional provision in the Compact that allows one State (Nebraska) to exercise eminent domain in another State (Colorado). Only this Court can competently resolve the parameters of how a State can properly exercise this right when the Compact itself offers no guidance.

7. This case also raises questions about the proper forum for such an unusual eminent domain action; enforcement of Nebraska’s water rights against Colorado’s overuse; and the ability of Nebraska to realize its contractual right to construct the Perkins County Canal without interference from Colorado.

8. There is no alternative forum capable of fully resolving the claims Nebraska asserts against Colorado, which are of such seriousness and dignity as to justify the exercise of the Court’s jurisdiction.

## **FACTUAL BACKGROUND**

### **I. The South Platte River**

9. The South Platte River is a significant interstate river arising in Colorado and flowing over 400 miles easterly into Nebraska before joining the North Platte River to form the Platte River near North Platte, Nebraska.

10. The South Platte River is a major source of water for Nebraska. Its flows support irrigation of Nebraska’s breadbasket, and the Platte River supplies domestic, municipal, and industrial water for Nebraska’s major industries and metropolitan areas in central and eastern portions of the State.

11. Both Nebraska and Colorado use the South Platte River. But as early as 1880—before the Compact was negotiated—Colorado overappropriated the River. Demand often exceeded supply, and the River frequently ran dry at the Colorado/Nebraska border.

12. Initially, both Nebraska and Colorado followed the “prior appropriation” doctrine to administer the appropriation of surface water within each state. Under this doctrine, water rights are administered based on when a user first applied a

particular quantity of water to a beneficial use, such as irrigation. Earlier (“senior”) appropriations are given priority over subsequent (“junior”) appropriations.

13. During this pre-Compact period, Nebraska attempted to assert the prior appropriation doctrine across state lines. In 1916, Nebraska’s Western Irrigation District sued junior South Platte River water users and water administrators in Colorado, seeking to apply the prior appropriation doctrine across the state line. The District originally sought entitlement to 180 cubic feet per second (“cfs”) of water for its irrigation season demands.

14. That lawsuit was stayed pending this Court’s disposition of a similar case, *Wyoming v. Colorado*, 259 U.S. 419 (1922), which addressed whether one state can assert prior appropriation against users in another state. This Court held that States can apply the doctrine across state lines. *Id.* at 470. See also *Weiland v. Pioneer Irrigation Co.*, 259 U.S. 498 (1922). Nebraska’s then-Attorney General claimed that he would use this Court’s decision to enforce Nebraska’s priority rights to South Platte River water against junior right holders throughout Colorado’s Front Range region, which draws on water from the South Platte.

## **II. The South Platte River Compact**

15. The Court’s *Wyoming* decision, and the Western Irrigation District litigation, led Nebraska and Colorado to commence negotiations on a compact

that would allocate the waters of the South Platte River. Colorado wanted to continue to use River water for several existing irrigation projects and retain the right to develop more. Nebraska wanted assurances that Colorado's irrigation projects would not deplete water rightfully due Nebraska and that the material benefits of "return flow" created by Colorado irrigation would accrue to Nebraska downstream. Return flow is comprised of water that is diverted for one or more uses, but is not entirely consumed. This unused portion of the water "returns" to the river and is available for subsequent diversion downstream.

16. As part of the discussions between the states, Colorado conducted hydrologic investigations that assured Nebraska that, with the support of return flows created by Colorado irrigators, total flows entering Nebraska would provide at least 120 cfs of irrigation season flows and at least 500 cfs of nonirrigation season flows to Nebraska. Colorado further represented that these flows would be more reliable than strict application of the prior appropriation doctrine across state lines, as would be permitted under *Wyoming v. Colorado*. Partially in reliance on these representations, Nebraska agreed to enter into a compact with Colorado.

17. Accordingly, in 1923, Nebraska and Colorado agreed to apportion the South Platte River's waters by entering into the Compact. Although the United States had no federal projects in the Basin and was not a party to the Compact, Congress approved it in 1926—the second interstate river compact to be

congressionally approved. *See* U.S. Const. art. I, § 10, cl. 3. Like all interstate river compacts, it is based on the South Platte Basin’s “peculiar” conditions. *See* South Platte River Compact, Article IX.

18. One of these peculiar conditions, and a fundamental underpinning of the Compact, was the promise that return flows from expanded irrigation uses in Colorado would produce a permanent, increasing, and reliable water supply for downstream Nebraska water users. According to Colorado’s then-Compact Commissioner: “The increase of flow at the state line will ultimately remove all necessity for regulation.” South Platte River Compact: Report of Delph E. Carpenter, Commissioner for Colorado (Jan. 7, 1925).

19. Accordingly, the parties agreed that Nebraska would be better off using water supported by ever-increasing return flows in the South Platte Basin projected to result from that arrangement. Nebraska generally agreed to the continuation of then-existing Colorado water uses and limited additional development in the Lower Section of the River, in exchange for the guarantee of resulting return flows. As defined in Article I of the Compact, “[t]he term ‘lower section’ means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.”

20. In exchange, Nebraska waived its right to claim priority over some junior water users along the South Platte River in Colorado. Its waiver was premised on Colorado complying “with the provisions of [the] compact and the delivery of water in accordance with its terms[.]”

### **III. Key Elements of the Compact**

21. The Compact requires Nebraska and Colorado to mutually maintain an “Interstate Station” near Julesburg, Colorado, to “ascertain[] and record[] the amount of water flowing in [the South Platte River] from Colorado into Nebraska[.]” *See* South Platte River Compact, Articles I & II. Further, the Compact divides each year into an irrigation season and a nonirrigation season. During the irrigation season (April 1 through October 15), if water flows at the Interstate Station fall below 120 cfs, Article IV requires Colorado to prohibit water diversions from the Lower Section for appropriations with priority dates after June 14, 1897.

22. Further, where any flow deficiency “may have been occasioned by neglect, error, or failure” by Colorado, the Compact gives Colorado 72 hours to cure that deficiency to ensure Nebraska is not materially injured by it.

23. While Article IV specifies Colorado’s duty to curtail junior irrigation season uses, Article VI protects the water supply that Nebraska relies on throughout the year. Article VI authorizes Nebraska



to construct a canal starting in Colorado to divert and carry water, primarily in the nonirrigation season (October 15 to April 1), for use in Nebraska. Article VI provides the:

canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the lower section, as of priority of appropriation of date December 17, 1921, only between the 15<sup>th</sup> day of October of any year and the 1<sup>st</sup> day of April of the next succeeding year. ... Any surplus waters of the river, which otherwise would flow past the interstate station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal[.]

Notably, the Compact does not provide specific design criteria for the diversion or canal.

24. To effectuate the canal's construction, Article VI gives Nebraska the right to acquire lands suitable for the canal system through purchase, prescription, or eminent domain, and such rights of way, easements or lands as may be necessary for the construction, maintenance, and operation of the canal, including within Colorado.

25. As explained further below, Nebraska has attempted to acquire land through arms-length negotiations with various Colorado landowners, but has met little success. The exercise of eminent domain

is now required, but the Compact does not specify a forum for eminent domain proceedings. Nebraska asserts that the federal courts, and proceedings under Federal Rule of Civil Procedure 71.1, are the proper forum. On information and belief, Colorado maintains that any such action must be undertaken in its state court system, particularly its Water Courts—which did not exist when the States entered the Compact in 1923, and which Colorado maintains must somehow re-validate Nebraska’s existing Compact right.

26. To protect the supply for Nebraska’s canal, Article VI effectively caps Colorado’s nonirrigation season uses in the River’s Lower Section to senior uses plus a 35,000 acre-feet storage reservation to Colorado for development in the Lower Section—but only after Nebraska’s rights are fully exercised. Once these Colorado demands are fulfilled, Nebraska is entitled to the remaining “net future flows” as referenced in Article VI.

27. As set forth in Article VI, the Compact negotiators intended that future water supplies in the Lower Section would generally be available to Nebraska at the State line and would not be intercepted before reaching Nebraska users.

28. As stated in the South Platte River Compact: Report of Delph E. Carpenter, Colorado’s then-Compact Commissioner, dated January 7, 1925:

The flow of return and seepage waters  
coming back to the river from

irrigation of Colorado lands, has resulted in a constant supply at the interstate line. This flow is increasing and will soon be sufficient to care for the full demands of Nebraska as determined by the compact ... principally by reason of the fact that most of said waters return to the river below the available points of diversion by Colorado constructors.

29. Unlike later interstate compacts, the Compact did not create a Compact Commission or other adjudicative body that can address questions arising between the parties and resolve intractable disputes. As such, there is no interstate forum to which Nebraska's concerns may be presented or through which they may be resolved. This Court is Nebraska's only available forum in which to obtain timely and meaningful relief.

30. Finally, Article VIII of the Compact requires that Article IV's water administration scheme be self-executing and not require additional legislation by Colorado to implement. This system was designed to be easily measurable and subject to objective verification. Nebraska is not obligated to accept a bare representation that Colorado has complied with its obligations or be forced to weed through layers of technocratic explanations of how compliance is being achieved. Instead, Article VIII provides "it shall be the duty of the officials of the State of Colorado ... to make deliveries of water ... in compliance with this compact

without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.”

#### **IV. Colorado’s Actions Following Compact Ratification**

##### **A. Actions Leading to Violations of Articles IV and VIII**

31. Almost immediately after signing the Compact, Colorado began authorizing water uses never contemplated by the compacting parties.

32. For example, during the Compact negotiations and for about a decade afterward, both States gave direct irrigation uses priority over water storage rights, even senior ones. That changed when Colorado’s law was altered to allow for irrigation season diversions for storage. *People ex rel. Park Reservoir Co. v. Hinderlider*, 57 P.2d 894, 895 (Colo. 1936). This change effectively removed water from the River otherwise available to Nebraska during the irrigation season.

33. More profoundly, Colorado has authorized thousands of surface water and surface-water-depleting, hydrologically connected groundwater diversions in the South Platte River Basin within Colorado, including the rapid expansion of the use of high-capacity groundwater irrigation wells. Due to these new diversions, flows at the Interstate Station frequently fall below 120 cfs during the irrigation season. Despite Article IV’s requirement that

Colorado prohibit such uses, Colorado users continued to divert water upstream, including in the Lower Section.

34. Before 1969, groundwater uses in Colorado did not follow the prior appropriation doctrine, meaning that newer, junior groundwater users could use as much water as they desired without considering their impact on older, senior surface water rights. This caused conflict between senior surface water users and junior groundwater users whose use was drawing water from the River. Colorado decided that curtailing all junior groundwater users in Colorado would render inaccessible vast amounts of groundwater and limit economic development in Colorado.

35. To address the impact of groundwater uses on River flows, and to facilitate maximum utilization of water supplies in Colorado—including on the South Platte River upstream of the State line—Colorado enacted extensive legislative reforms in 1969 that incorporated groundwater uses into its intrastate water administration scheme. This legislation made it “the policy of [Colorado] to integrate the appropriation, use, and administration of underground water tributary to a stream with the use of surface water in such a way as to maximize the beneficial use of all the waters of [Colorado].” Colo. Rev. Stat. § 37-92-102.

36. Among other things, these legislative reforms authorized “augmentation plans”—“detailed,

court-approved plans that allow a water user to divert water ‘out of priority’ ... as long as adequate replacement water is put into the affected stream system in order to increase the supply of water available for beneficial use.” Lain Strawn, *The Last GASP: The Conflict Over Management of Replacement Water in the South Platte River Basin*, 75 U. Colo. L. Rev. 597, 599 n.14 (2004). They are designed to increase the supply of water available for use—in Colorado.

37. But Colorado water administrators were not content to wait for the State courts. Seizing on the policy to maximize use, they embraced legally and physically dubious theories for water administration and authorized junior appropriators to “offset” hydrologic impacts and theoretically make whole senior appropriators who could otherwise call for the juniors to be shut off. These offsets relied on various types of replacement water supplies, were approved administratively (rather than judicially), and relied entirely on unverified assumptions about the timing of when replacement water would actually arrive at the senior user’s point of diversion.

38. The Colorado Supreme Court subsequently found many of these offset mechanisms (so-called substitute water supply plans) unlawful. *See Empire Lodge Homeowners’ Ass’n v. Moyer*, 39 P.3d 1139 (Colo. 2001). The court held that Colorado administrators lacked the authority to approve such mechanisms. Such approval could only come from

Colorado's Water Courts in the form of formal augmentation plans.

39. Whether approval comes from a state administrator or through the state judiciary, for Nebraska, the end result is the same: Colorado continues to allow junior appropriators to divert South Platte River water out of priority. Today, junior Colorado users can take water before senior Colorado users through judicially approved augmentation plans that take various forms.

40. Colorado's water administration system, including its augmentation plans, have harmed and will continue to harm Nebraska. For example, many augmentation projects in Colorado Water District 64 within the Lower Section allow junior well owners to pump water out of priority during the irrigation season, provided they pump or divert additional water during the nonirrigation season and apply it to recharge ponds. A recharge pond is a man-made waterbody designed to allow water to infiltrate into the ground, replenishing the aquifer below. This method assumes that water will percolate back into the water table and make its way to the South Platte River in time to make whole downstream senior users.

41. But this assumption is just that—an assumption, with no real-time reporting or on-the-ground physical verification to back it up. Yet these projects in the South Platte Basin are regularly approved by Water Courts, even though they do not comply with basic Compact requirements, such as

Article IV's measurement point (the Interstate Station) or the requirement that any shortage of Nebraska's irrigation-season right be made up by delivery of additional flow at the Interstate Station within 72 hours. Ultimately, the State Engineer, as the chief state water official designated under the Compact, must ensure Nebraska gets its water and that Colorado's critical interstate delivery obligations are fulfilled. What is very clear is that the State Engineer cannot ensure that augmentation water reaches the Interstate Station on the precise day on which it is supposed to.

42. These augmentation plans not only divert water rightfully due to Nebraska under the Compact, but they have also created such a complex scheme that water administration is no longer self-executing, as Article VIII of the Compact requires.

43. Even the Colorado Supreme Court has found that the byzantine nature of Colorado's water administration system precludes the Compact from being self-executing. *Simpson v. Bijou Irrigation Dist.*, 69 P.3d 50, 55 (Colo. 2003) ("We find that as a result of changed conditions that have occurred since the compact was created, the South Platte River Compact is deficient in establishing standards for administration within Colorado.").

## **B. Actions Leading to Violations of Article VI**

44. Not only has Colorado breached Articles IV and VIII of the Compact, but it has also breached



Article VI. As reviewed above, Article VI ensures Nebraska additional water during the nonirrigation season and provides Nebraska the right to build a canal to capture this water. But, for decades, Colorado's efforts to maximize its water uses (including through augmentation efforts invalidated by its own Supreme Court), have relied largely on diversions during the nonirrigation season.

45. In addition, over the last decade, Colorado has made clear that it will develop multiple projects that will consume the very water Colorado previously promised to make available for the Perkins County Canal. In 2016, for example, Colorado's Legislature adopted H.B. 12-1256, 70<sup>th</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Sess. (Colo. 2016), *South Platte Water Storage Study*, directing Colorado agencies to determine the amount of flow leaving Colorado in "excess" of Nebraska's Article IV entitlement. The Legislature did so under the presumption that, since Nebraska had not built a canal pursuant to Article VI, all water in excess of Nebraska's 120 cfs entitlement under Article IV would be available for capture and use in Colorado. The bill's accompanying fiscal note explained plainly: "Excess water to Nebraska estimate. [Colorado Water Conservation Board] staff will use existing data to estimate the volume of water delivered to Nebraska in excess of the amounts required under the South Platte River compact for each of the previous 20 years." The Colorado Water Conservation Board was created in the late 1930s and provides policy direction to Colorado officials and others regarding water issues ranging from water supply planning and water project

financing to protection of Colorado’s interstate Compact rights.

46. In 2017, as a result of H.B. 12-1256, Colorado published the South Platte Storage Study (“the Study”). The Study concluded that about 400,000 acre-feet/year of “excess flows” are leaving Colorado—roughly 90% of the average flow at the state line. In 2022, the Colorado Legislature introduced a bill (S.B. 22-126, 73<sup>rd</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Sess. (Colo. 2016)) to prioritize projects that will increase the beneficial consumptive use of Colorado’s undeveloped compact-entitled waters, with a specific priority for projects that increase or improve water storage in the South Platte River Basin. The Colorado Senate unanimously passed the bill, indicating an accelerating effort to utilize that block of “excess flows” to support municipal growth along Colorado’s Front Range region.

47. In addition to the Legislature, other Colorado entities are taking action to capture this water, too. Three entities—the Lower South Platte Water Conservancy District, the Parker Water and Sanitation District, and Castle Rock Water—are collaborating on the Platte Valley Water Partnership. This scheme aims to capture nonirrigation season and peak irrigation season flows, in part by pumping tens of thousands of acre-feet each year from a diversion just upstream of the Lower Section boundary back upstream for storage in the Reuter-Hess Reservoir in Douglas County, Colorado, for use by Front Range communities. Proponents claim this project will

capture “excess” water that would otherwise leave Colorado and flow into Nebraska, which Colorado erroneously views as wasted.

48. Nebraska and its citizens have long sought to build the canal contemplated in Article VI. Farmers initially began digging the canal in earnest in 1894 but could not complete the project after running short of funds. Additional efforts have been undertaken over the past 100 years but have run into issues with underfunding and the extraordinary scale of the project. It became increasingly clear that a material public investment would be required to complete the project.

49. Colorado’s actions in the early 2000s instilled Nebraska with a renewed sense of urgency. In 2002, after the Colorado Supreme Court decided *Empire Lodge*, augmentation activities increased, taking more and more of the nonirrigation season supplies that form the basis of Nebraska’s Article VI canal right. This, in turn, facilitated more and more irrigation season diversions by junior irrigators who were purportedly offsetting their irrigation season impacts by diverting and augmenting in the nonirrigation season. This vicious cycle—which is still happening today—results in less and less water making its way to Nebraska year-round.

50. Partly in response to Colorado’s open and notorious plan to consume all the remaining water in the South Platte River Basin, in January 2022 Nebraska’s governor announced plans to build the

Perkins County Canal, as contemplated in Article VI of the Compact, to secure Nebraska's Article VI rights. That summer, Nebraska sent Colorado a general outline of its plans and initiated a dialogue designed to identify concerns Colorado might have in an effort to minimize conflicts. Nebraska even provided Colorado with background and summary information concerning the canal.

51. The States' legal and technical representatives communicated no fewer than ten times between October 2022 and June 2025 to identify relevant issues and areas of potential agreement or concern.

52. In the fall of 2022, Nebraska sent letters to Colorado landowners in the vicinity of the potential canal route, inviting them to a public meeting to learn about Nebraska's goals and objectives. Nebraska officials explained at that meeting that Nebraska was interested in acquiring options to purchase lands along the canal route. Numerous attendees participated, and some expressed interest in optioning Nebraska the right to acquire an interest in their lands. Ultimately, only one purchase materialized from these discussions.

53. In November 2022, Colorado's State Engineer acknowledged before the Colorado Water Conservation Board, "We continue to have dialogue with the Nebraska officials and they are being constructive about trying to tell us what they are doing and giving us more detail." And in October 2023,

Nebraska provided Colorado with a water availability analysis attempting to garner a common understanding of the probable water supply for the canal. Nebraska never received any response to that analysis.

54. Nebraska also submitted a written request to Colorado, asking that Colorado recognize and administer Nebraska's Article VI right, in the hopes it might be honored without the burden and expense of constructing a canal partially through and over Colorado lands. But Colorado refused, explaining that "[b]ecause Nebraska has not constructed the Perkins County Canal, there is no basis for Colorado to administer junior water appropriations[.]" Colorado made clear it will not recognize any Nebraska right to water under Article VI unless the canal is built.

55. In 2022, the Nebraska Legislature created the Perkins County Canal Project Fund and appropriated initial funding in the amount of \$53.5 million to contract with an independent firm to study and begin designing the canal. *See* LB 1012 (2022); Neb. Rev. Stat. § 61-305. In December 2022, the study was released, finding that the canal would provide significant benefits to Nebraska's water users that would exceed the project costs, but that such benefits would only accrue under the Compact if the canal were built. The study also provided a preliminary water supply analysis and potential infrastructure sizing and location information.

56. Nebraska’s right to build the canal is absolute and is in no way dependent on Colorado’s present views about the canal or Colorado’s future water supply needs.

57. In 2023, the Nebraska Legislature approved additional funding—\$574.5 million—for the canal’s construction. *See* LB 818 & 531 (2023); Neb. Rev. Stat. § 61-305. Nebraska has retained legal, technical, and engineering experts, and canal design and permitting is well underway. To date, Nebraska has acquired a limited amount of Colorado land through voluntary purchase, has reached a 30% design status on the canal, is nearing 60% status, and continues to address related legal, regulatory, and permitting issues.

58. Despite Nebraska’s best efforts to secure cooperation, Colorado has stonewalled and opposed Nebraska at every step.

59. In official statements, a spokesperson for the Colorado Governor initially dismissed Nebraska’s plan to expend hundreds of millions of dollars on the canal, declaring it a “boondoggle” and a “political stunt” that would never proceed. During a Colorado Senate Agriculture and Natural Resources Committee hearing, the then-Assistant Director of Water Policy at Colorado’s Department of Natural Resources accused Nebraska of attempting to “weaponize” Colorado’s water planning documents by simply citing them as justifications for the extraordinary downstream investment.

60. One State Representative made Colorado's position clear: "It's all Colorado's water. If I had my way ... I would go and say, you know what downriver states, we no longer want to even honor the interstate compacts that we wrote in the 1800s. ... So we'll take you to the Supreme Court and fight this one out."

61. Despite this rhetoric, by April 2022, Colorado officials, while cautious, appeared prepared to live by the Compact's terms. As the former State Engineer explained: "We're not going to obstruct Nebraska from taking water they're legally entitled to." He added, "It's not my objective to try and stop [the canal]." Colorado water users in the Lower Section, such as the North Sterling Irrigation District, which encompasses over 40,000 acres, and the Lower South Platte Water Conservancy District, which facilitates and supports water supply development projects or programs dependent on the South Platte River (e.g., the Julesburg Recharge Project, South Platte Water Related Activities Program, District 64 Reservoir Company, Northeast Colorado Water Cooperative, Platte Valley Water Partnership, and South Platte Regional Opportunities Water Group), begrudgingly have acknowledged that Nebraska is entitled to build the canal, even if they think it imprudent.

62. Moreover, throughout the States' discussions, Colorado officials regularly and publicly conceded that Nebraska had the right to proceed with the canal. For example, in May 2023, the former State Engineer explained before the Colorado Groundwater

Commission, “So we are of course being watchful, all the while recognizing that there is a Compact provision that allows construction of [the canal], and of course, if it’s done according to the Compact, then that can move ahead—that’s the key.”

63. As plans for the canal began to crystallize, Colorado’s tenor changed from tacit acceptance to opposition. Colorado’s Attorney General told the Colorado Water Conservation Board in January 2024:

Nebraska is heating up. As Dan noted we have our eyes on this challenging and also novel situation. We don’t believe there’s ever been a case in American history where one state has sought to exercise the power of eminent domain in another state. That is going to raise some significant legal issues. We are preparing for them. We’re prepared to engage on the ground to let people know what rights they have.

64. Then, on January 27, 2025, Colorado’s new State Engineer told the Colorado Water Conservation Board:

So there’s a lot of uncertainty on what a condemnation process might look like in another state ... it could be long and costly ... we are ready to defend our water users in Colorado and I



think that's one message I want to make sure people understand is that we are engaged, that we are ready to defend our water users.

65. That was followed on January 28, 2025, by a letter from the Colorado Attorney General to the Sedgwick County Commissioners, stating:

Nebraska's pursuit of the Perkins Canal Project is a matter that the Colorado Department of Law/Attorney General's Office is closely engaged with—and opposed to. I have visited multiple times with the Nebraska attorney general to reinforce Colorado's legal position. And I conveyed that not only will this project provide little to no benefit to Nebraska—but also that if Nebraska continues down this path, the State of Colorado is prepared to defend its rights under the South Platte River Compact. My commitment to defending these rights includes going to court if necessary—an outcome that is near certain if Nebraska follows through on its threat to use condemnation proceedings to compel the sale of land owned by Coloradans.

66. Colorado's Attorney General made the same points on social media:

We are in a new chapter with our brewing dispute with Nebraska over its plans to build a canal in Colorado. I had hoped it would never come to this, but as it happens, we're no longer in the hypothetical, 'what might they do, I hope they don't do this' world. We've moved into 'they're really doing this' and we are ready to respond in court.

67. And as recently as June 16, 2025, Colorado's Attorney General explained during a campaign event in Fort Morgan, Colorado, that his office has pledged to defend Colorado landowners if Nebraska moves forward with condemnation, and that a legal disagreement exists over whether condemnation proceedings would fall under state or federal jurisdiction. According to him, that issue "may get litigated up to the U.S. Supreme Court before any construction would ever start."

68. Colorado has also deployed many proxy actors to oppose the canal's construction. For example, in July 2024, John Altenhofen, the South Platte Project Manager for Northern Water, told a crowd at the Upper South Platte Watershed Association: "Nebraska, you've woken up a giant here. You put in the Perkins, in the winter we're going to dry it up at the state line because we can under the Compact and we'll be trying to recover some of the recharge they're shutting down."

69. Similarly, on March 18, 2025, Sedgwick County Commissioner Ron Berges explained the county would be working to update local regulations so they could be used to stall and obstruct the canal's construction. He explained: "We [Sedgwick County] plan to use [a local attorney's] office's expertise in the 1041s so we can really substantially strengthen and bolster our 1041 regulations to make this a very uncomfortable thing for Nebraska." The "1041 regulations" refer to Colorado state statutes that purport to allow local governments to identify, designate, and regulate activities of statewide interest through a local permitting process and exert control over particular development projects, even where the development project has statewide impacts.

70. Also in March 2025, Jon Altenhofen of Northern Water explained:

I mean, our goal really down here is to stop the Perkins and stay irrigating ag in Northeast Colorado. ... We're here to save Northeast Colorado by first stopping the Perkins, which they have so many roadblocks. I'm not a lawyer but the first lawsuit might be condemnation. The second lawsuit may be over a [Clean Water Act permit] ... We go to court whether it's condemnation, whether it'd be over the [permit], I'm ready for a fight over a Compact lawsuit.

71. Additionally, private actors have formed a group called the South Platte Water Alliance. According to the General Manager of the Lower South Platte Water Conservation District: “This is really a conglomeration of District 64 water users and landowners coming together to kind of form an organization to help, you know, in that [condemnation] fight, in that defense I guess if you will[.]” The Lower South Platte Water Conservation District itself has paid dues to be a member of the Alliance.

72. Finally, in addition to the proxy actors and private actors, Colorado’s own state agency tasked with administering water rights in Colorado, the Division of Water Resources, has been utilizing administrative practices on the South Platte River unforeseen by the compacting parties, effectively punishing Nebraska for exercising its Compact rights. Namely, the agency is preventing users in the Lower Section from calling out users in the Upper Section unless the Lower Section calling right is senior to the pertinent Compact administrative date, i.e. December 17, 1921, for nonirrigation season and June 14, 1897, for irrigation season. This has the effect of depriving Nebraska of water it is entitled to under the Compact.

73. Recognizing that Colorado was digging in for a fight—and with canal designs reaching a critical point—Nebraska nevertheless persisted. Because the diversion works and first section of the canal are to be constructed entirely within Sedgwick County in Colorado, on January 17, 2025, Nebraska sent letters

to six local landowners in that county, notifying them that Nebraska anticipates placing the canal's diversion structure on their land. Nebraska offered to pay them 115% of fair market value if they entered voluntary agreements to sell their land. Nebraska also informed the landowners that it intended to exercise its power of eminent domain under the Compact, but only if the parties failed to reach amicable terms.

74. To this day, Colorado has refused to provide any written, substantive feedback to any data or analyses Nebraska has provided in response to Colorado's requests for information concerning the canal and the assumptions upon which Nebraska has relied to determine its future water supply. Colorado has verbally insisted that the canal commence at a point southwesterly of Ovid, Colorado, and be designed in accordance with antiquated construction standards to ensure leakage.

75. It appears Colorado is gearing up for a protracted legal battle to be fought directly and by proxy through its water users and constituents, even though they all are bound by the Compact and all conflicting state laws are subordinate to it. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938).

76. At this point, the States are at an impasse with regard to the canal, unable to resolve differences concerning the canal's design and its operation, as well as the water supplies available to be diverted into

the canal under Article VI. Among other things, the States appear to disagree on:

77. *The size and location of the canal.* Nebraska asserts the canal necessarily may be sized to carry surplus waters and net future flows in accordance with the Compact, and this means it may exceed 500 cfs capacity. Nebraska further asserts there is no record evidence that the Compact's reference to the canal's commencement point was meant to preclude other locations that would be less burdensome on Colorado landowners, provided the canal could still function as intended.

78. *The proper venue for eminent domain proceedings.* Nebraska asserts that the federal courts, and proceedings under Federal Rule of Civil Procedure 71.1, are the proper forum.

79. *The timing and scale of diversions allowed.* Nebraska asserts that it may divert any and all surplus water and available net future flow, and therefore there is no upper limit on the amount of water that may be physically diverted.

80. *The proper definition and division of "net future flows" between the States.* Nebraska asserts that once the canal is built, Nebraska is entitled to demand all water flowing in the Lower Section, except that needed to meet Colorado uses predating December 17, 1921, and Colorado's reserved 35,000 acre-foot storage right.

81. *The extent to which Colorado has exceeded 35,000 acre-feet of additional storage for use in the Lower Section.* Nebraska asserts Colorado has already exceeded and continues to divert additional storage in violation of this limited reservation.

82. *The proper administration of water uses within Colorado for Nebraska's Compact entitlements.* Nebraska asserts that Colorado must honor senior calls from Colorado users in the Lower Section against those juniors in the Upper Section, including whenever Nebraska makes a valid call on the River. This maintains return flows, ensures water continues to enter the River's Lower Section so Nebraska can access its nonirrigation season water via the Perkins County Canal and maximizes flows at the Interstate Station during the irrigation season.

83. On information and belief, Colorado disagrees with all of Nebraska's assertions on these issues.

## **V. Colorado's Actions Breach the Compact**

### **A. Colorado has breached its obligations under the Compact by diverting water inconsistent with Articles IV and VIII's scheme.**

84. Colorado allows diversions that should be curtailed when flows at the Interstate Station fall below 120 cfs. In the past ten years alone, flows have fallen below 120 cfs at the Interstate Station during the irrigation season hundreds of times. Colorado has

nevertheless allowed junior water users to divert water destined for Nebraska. That violates Article IV of the Compact.

85. As a result of these actions, Nebraska has been deprived of up to 1,300,000 acre-feet of water owed it during the irrigation season, with the exact amount to be proved at trial. Irrigation season flows in the South Platte River will continue to decline, and Nebraska will continue to be deprived of the full benefits of the Compact, unless Colorado is stopped.

86. As a result of Colorado's actions, Nebraska farmers have been unable to regularly provide South Platte surface water to their lands and have suffered lower crop production and even crop failures. In 2022, for the first time in almost 50 years, the Western Irrigation District was forced to completely shut down surface water irrigation operations for the majority of its service area due to a lack of water supply. The Western Irrigation District and other Nebraska water users have been forced to pivot to alternative supplies, when and where available, including finite supplies of groundwater, as well as surface water stored in projects on the North Platte River and the mainstem Platte River.

87. When South Platte River water is taken from Nebraska, it makes compliance with Nebraska's water management objectives more difficult. These objectives, embodied in State law, generally require water uses in the South Platte River Basin and portions of the mainstem Platte River Basin to be



maintained at 1997 levels through regulated allowances of surface water and groundwater uses. *See, e.g.*, Neb. Rev. Stat. §§ 46-713–720; *In the Matter of the Platte River Basin upstream of the Kearney Canal Diversion, the North Platte River Basin, and the South Platte River Basin*, Order Designating Overappropriated River Basins, Subbasins, Or Reaches, And Describing Hydrologically Connected Geographic Area (Sept. 15, 2004). Thus, it is not possible simply to move all uses to a groundwater supply as surface water supplies diminish.

88. Nebraska has formally and repeatedly expressed its concerns to Colorado and has made numerous attempts to obtain an explanation concerning Colorado’s water administration protocols and why Colorado believes these protocols comply with the Compact. Those requests have been outright ignored or met with bare compliance assertions. Colorado’s unlawful practices persist and will continue to harm Nebraska unless and until abated by this Court.

89. Article VIII was meant to be self-executing. Colorado, however, has allowed so many diversions of water outside the Compact’s simple scheme that even the Colorado Supreme Court found Compact compliance is no longer self-executing. The Colorado system of water administration violates Article VIII’s express command.

**B. Colorado has breached its obligations under the Compact by frustrating Nebraska's rights to water under Article VI.**

90. Colorado insists that Nebraska has no right to nonirrigation season water unless it builds the Perkins County Canal, yet Colorado is frustrating and interfering with Nebraska's efforts to build that canal. Colorado's obstruction of Nebraska's efforts to construct the canal is preventing Nebraska from accessing water to which it would be entitled if the canal were in place today. Without the canal, Nebraska is incapable of enforcing its entitlements against junior Colorado water users—the very entitlements Nebraska entered the Compact to protect. Meanwhile, Colorado is racing to develop water supplies that would be available to divert into the canal in an obvious effort to build future equities in its favor—at the expense of Nebraska's water security. That violates Article VI of the Compact.

91. Colorado has also mobilized a network of political subdivisions and nonstate actors to identify and create additional barriers to the canal's construction. Not only is Colorado actively opposing the canal, but it is preparing to fight a proxy war through a myriad of water users and related interest groups.

92. In sum, Colorado is violating multiple provisions of the Compact, and Colorado's actions are causing substantial and irreparable injury to Nebraska. Absent protection from this Court,

Nebraska's farmers will continue to be deprived of irrigation water. Nebraska's cities and industries that rely on water from the Platte River system will have less water available for use. Fish and wildlife, including federally protected species, will have less water available, which is essential to their continued survival. Moreover, all existing water supplies will be subjected to greater uncertainty, as Nebraska cannot ensure the continuation of nonirrigation season flows across the state line unless and until the canal is timely completed.

93. Nebraska has no adequate remedy for Colorado's past, present, continuing, and future violations of the Compact except by invoking this Court's original jurisdiction.

94. Nebraska files this suit only after exhausting good-faith efforts to resolve its disputes with Colorado, with those efforts playing out over a period of nearly three full years.

## **PRAYER FOR RELIEF**

WHEREFORE, the State of Nebraska respectfully prays that the Court:

- A. Declare the rights of the State of Nebraska pursuant to and consistent with the South Platte River Compact;
- B. Declare that the State of Colorado's political subdivisions and individual water claimants are represented by and through the State of Colorado in these proceedings and are bound by Colorado's century old commitments in the South Platte River Compact;
- C. Quantify and award to the State of Nebraska the waters to which it has been deprived by reason of Colorado's violations of Articles IV and VI of the Compact;
- D. Issue a decree commanding the State of Colorado, its officers, citizens and political subdivisions to:
  1. Cease and desist all actions which interfere with or impede the authority of the State of Nebraska to construct, maintain and operate the Perkins County Canal;
  2. Cease and desist actions that allow junior Colorado appropriators to consume water to which Nebraska is entitled under Article IV and restore the self-executing system of administration that was foundational to the Compact;

3. Provide to Nebraska, through specific performance, an amount of water equivalent to that determined to have been withheld from Nebraska as a result of Colorado's Compact violations; and provide that water in such time and place that it may be captured and used for beneficial use in Nebraska.
- E. Require Colorado to disgorge the economic benefits of the South Platte River water it has unjustly retained as a result of its unlawful water administration practices and overconsumption of water;
  - F. Award all other relief appropriate to fully remedy the injury suffered by the State of Nebraska; and
  - G. Award Nebraska its costs, reasonable attorney's fees, and punitive damages for Colorado knowingly acting in violation of the Compact.

Respectfully submitted,

MICHAEL T. HILGERS  
Attorney General of Nebraska  
CODY S. BARNETT  
Solicitor General

JUSTIN D. LAVENE  
Assistant Attorney General  
*Counsel of Record*  
NEBRASKA DEPARTMENT OF  
JUSTICE  
1445 K Street, Room 2115  
Lincoln, Nebraska 68508  
(402) 471-2683  
justin.lavene@nebraska.gov

THOMAS R. WILMOTH  
DONALD G. BLANKENAU  
KENNON G. MEYER  
Special Assistant Attorneys  
General  
BLANKENAU WILMOTH  
JARECKE LLP  
2900 South 70<sup>th</sup> Street, Suite  
150  
Lincoln, Nebraska 68506

*Counsel for State of Nebraska*

## **EXHIBITS**

## TABLE OF EXHIBITS

	Page
South Platte River Compact Between The States Of Colorado And Nebraska .....	1a



**South Platte River Compact Between The  
States Of Colorado And Nebraska**

The State of Colorado and the State of Nebraska, desiring to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to the waters of the South Platte River, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and, through their respective governors, have named as their commissioners:

Delph E. Carpenter, for the State of Colorado; and Robert H. Willis, for the State of Nebraska, who have agreed upon the following articles:

**Article I**

In this compact:

1. The State of Colorado and the State of Nebraska are designated, respectively, as "Colorado" and "Nebraska".
2. The provisions hereof respecting each signatory State shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State.
3. The term "upper section" means that part of the South Platte River in the State of Colorado above

and westerly from the west boundary of Washington County, Colorado.

4. The term "lower section" means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.

5. The term "interstate station" means that stream-gauging station described in Article II.

6. The term "flow of the river" at the interstate station means the measured flow of the river at said station, plus all increment to said flow entering the river between the interstate station and the diversion works of the western irrigation district in Nebraska.

## **Article II**

1. Colorado and Nebraska, at their joint expense, shall maintain a stream-gauging station upon the South Platte River at the river bridge near the town of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of the western irrigation district in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said diversion works at all times between the 1st day of April and the 15th day of October of each year. The location of said station may be changed from year to year as the river

channels and water flow conditions of the river may require.

2. The State engineer of Colorado and the secretary of the department of public works of Nebraska shall make provision for the cooperative gauging at and the details of operation of said station and for the exchange and publication of records and data. Said State officials shall ascertain the rate of flow of the South Platte River through the lower section in Colorado and the time required for increases or decreases of flow, at points within said lower section, to reach the interstate station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the interstate station.

### **Article III**

The waters of Lodgepole Creek, a tributary of the South Platte River, flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows:

1. The point of division of the waters of Lodgepole Creek shall be located on said creek 2 miles north of the boundary line common to the signatory States.

2. Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of division and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of division.

3. Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the interstate station for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the interstate station in compliance with Article IV of this compact: *Provided, however,* That such runs of stored water shall be made in amounts of not less than 10 cubic feet per second of time and for periods of not less than twenty-four hours.

#### **Article IV**

The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows:

1. At all times between the 15th day of October of any year and the 1st day of April of the next succeeding year Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI.

2. Between the 1st day of April and the 15th day of October of each year Colorado shall not permit diversions from the lower section of the river to supply Colorado appropriations having adjudicated dates of priority subsequent to the 14th day of June, 1897, to an extent that will diminish the flow of the river at the interstate station on any day below a mean flow of one hundred and twenty cubic feet of water per second of time, except as limited in paragraph 3 of this article.

3. Nebraska shall not be entitled to receive, and Colorado shall not be required to deliver, on any day any part of the flow of the river to pass the interstate station, as provided by paragraph 2 of this article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska.

4. The flow of the river at the interstate station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants.

5. It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the interstate station, and it is agreed that, in the performance of the provisions of said paragraph 2, minor or compensating irregularities and fluctuations in the flow at the interstate station shall be permitted; but where any deficiency of the mean daily flow at the interstate station may have been occasioned by neglect, error, or failure in the performance of duty by the Colorado water officials having charge of the administration of diversions from the lower section of the river in that State, each such deficiency shall be made up, within the next succeeding period of seventy-two hours, by delivery of additional flow at the interstate station, over and above the amount specified in paragraph 2 of this article, sufficient to compensate for such deficiency.

6. Reductions in diversions from the lower section of the river, necessary to the performance of paragraph 2 of this article by Colorado, shall not impair the rights of appropriators in Colorado (not to

include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its constitution, laws, and the decisions of its courts.

7. Subject to compliance with the provisions of this article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the river which hereafter may flow within the boundaries of that State from the 1st day of April to the 15th day of October in each year, but Nebraska shall be permitted to divert, under and subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the interstate station.

#### **Article V**

1. Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of the Julesburg irrigation district which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both States, and Colorado shall continue to exercise control and jurisdiction of said canals and the carriage and delivery of water thereby. This article shall not excuse Nebraska water users from making reports to Nebraska officials in compliance with the Nebraska laws.

2. Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph 1 of this article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar landowners served by said canals within Colorado; *Provided, however,* That Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interests of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments; provided, however, such charges or assessments shall be the same as those levied against similar interests of owners of land in Colorado.

3. Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights of way, easements, or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above-mentioned canals which now or hereafter may extend into Nebraska.



## Article VI

It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado for irrigation of lands in Nebraska; that said canal may commence on the south bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed Perkins County Canal (sometimes known as the South Divide Canal) and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed:

1. Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska in the manner and at the time in this article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights of way, easements, or lands as may be necessary for the construction, maintenance, and operation of said canal; *subject, however,* to the reservations and limitations and upon the conditions expressed in this article which are and shall be limitations upon and reservations and conditions running with the rights and privileges hereby

granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal.

2. The net future flow of the lower section of the South Platte River which may remain after supplying all present and future appropriations from the upper section and after supplying all appropriations from the lower section perfected prior to the 17th day of December, 1921, and after supplying the additional future appropriations in the lower section for the benefit of which a prior and preferred use of thirty-five thousand acre-feet of water is reserved by subparagraph (a) of this article, may be diverted by said canal between the 15th day of October of any year and the 1st day of April of the next succeeding year, subject to the following reservations, limitations and conditions:

(a) In addition to the water now diverted from the lower section of the river by present perfected appropriations Colorado hereby reserves the prior, preferred, and superior right to store, use, and to have in storage in readiness for use on and after the 1st day of April in each year an aggregate of thirty-five thousand acre-feet of water to be diverted from the flow of the river in the lower section between the 15th day of October of each year and the 1st day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by

Colorado of the right of future use of the water hereby reserved.

(b) Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this article, said proposed canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the lower section, as of priority of appropriation of date December 17, 1921, only between the 15th day of October of any year and the 1st day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the upper section or present appropriations in the lower section and those hereafter to be made therein as provided in subparagraph (a).

3. Neither this compact nor the construction and operation of such a canal nor the diversion, carriage, and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred, or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the 1st day of April to the 15th day of October of any year or against any present or future appropriator or user of water from said river in Colorado during said period of every

year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the interstate station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this article.

4. Diversions of water by said canal shall not diminish the flow necessary to pass the interstate station to satisfy superior claims of users of water from the river in Nebraska.

5. No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska.

6. Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the interstate station as provided by Article IV of this compact.

### **Article VII**

Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

### **Article VIII**

Whenever any official of either State is designated herein to perform any duty under this contract, such designation shall be interpreted to include the State official or officials upon whom the duties now performed by such official may hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes to make deliveries of water at the interstate station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

### **Article IX**

The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

### **Article X**

This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated, and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the western irrigation district to the water of the South Platte River from the 16<sup>th</sup> day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termination, and the State of Colorado and its citizens who may be made defendants in any action brought for such purpose shall not be permitted to plead the statutes of limitation for such periods of time.

### **Article XI**

This compact shall become operative when approved by the legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the legislature shall be given by the governor of each State to the governor of the other State, and to the President of the United States, and the President of the United States is requested to give notice to the governors of the signatory States of the approval by the Congress of the United States.

In witness whereof, the commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the Signatory States.

Done at Lincoln, in the State of Nebraska, this twenty-seventh day of April, in the year of our Lord one thousand nine hundred and twenty-three.

Delph E. Carpenter,

Robert H. Willis.

Approved, March 8, 1926.