

From: Swanda, Marvin R
To: Scott, Craig D
Subject: Fw: MRNRD surface water controls added to the IMP
Date: Thursday, February 11, 2010 12:37:36 PM
Attachments: [lmace001.jpg](#)



From: Aycock, Gordon L
To: Ryan, Michael J; Thompson, Aaron M
Cc: Campbell, Gary W; Soucy, John F; Buchholz, Marcia L; Birdwell, Sabina; Swanda, Marvin R; 'CHAFFIN, JOHN'
Sent: Thu Feb 11 12:36:10 2010
Subject: RE: MRNRD surface water controls added to the IMP

Here's what I recall:

The State Engineer in Colorado first placed a call on our Bonny Reservoir water right in May of 2007. His position is that this call has remained in effect but they have allowed us to temporarily store water and then release it at the most opportune time to provide more water at the Benkelman Gage. Colorado has continued to account for water stored and released from Bonny Reservoir since they first instigated the call. Since they made the initial call in May of 2007 but applied it to the beginning of the calendar year we did argue that they were calling on water we had already stored. Our legal counsel (Chaffin and Dubois) determined that this was probably a weak argument that wasn't worth pursuing. So there may not be that much difference between the two states.

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From: Ryan, Michael J
Sent: Thursday, February 11, 2010 11:52 AM
To: Thompson, Aaron M
Cc: Campbell, Gary W; Soucy, John F; Buchholz, Marcia L; Birdwell, Sabina; Swanda, Marvin R; Aycock, Gordon L; 'CHAFFIN, JOHN'
Subject: FW: MRNRD surface water controls added to the IMP

Good morning Aaron,

Please tell me how you think administration of these surface water controls would play out.

My first impression is the State Engineer (Mr. Dunnigan of Nebraska DNR) would determine the State is or is likely to be out of compliance with the Republican River Compact. At that time, the State Engineer would order surface water right holders to cease diversions of natural flow and cease storage of natural flow. However, previously stored water could continue to be held in storage or delivered consistent with our water service/repayment contracts. If so, that approach is a bit different than Colorado's administration of water in Bonny Reservoir. Please recall Colorado's State Engineer has "looked back in time" to determine that previously stored water should not have been stored and Reclamation must release it. Although it may appear to be a subtle difference between Nebraska's and Colorado's approaches ... the difference in our operations could be significant.

Mike.

From: Brad Edgerton [<mailto:Brad.Edgerton@fcidwater.com>]
Sent: Thursday, February 11, 2010 11:21 AM
To: Dale Cramer; Jay Schilling; Merin Brown; 'Steve Henry'
Cc: Thompson, Aaron M; Swanda, Marvin R; LeRoy W. Sievers; Ryan, Michael J; Aycock, Gordon L
Subject: MRNRD surface water controls added to the IMP

All

The MRNRD handed out copies of their Draft IMPs Tuesday night. The surface water controls say that the natural flow permits will be closed and the storage permits will be closed. They either choose not to include the storage use permits or missed it. It also says "as necessary" to comply, so they could close storage use permits if needed. They don't give a priority date on the "Compact Call" so it must trump everything.

Brad

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