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December 5, 2019

Rebecca Mitchell, Director
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203

Re: Republican River Water Conservation District Loan Approved
November 20, 2019.

Dear Director Mitchell:

The Colorado General Assembly established the Republican River Water Conservation District (RRWCD) in 2004 in response to litigation initiated by the State of Kansas (Kansas v. Nebraska and Colorado, original No. 126). The legislation is codified at C.R.S. §§ 37-50-101, et. seq. The principal purpose for the establishment of the RRWCD was to assist the State of Colorado in achieving and maintaining compliance with the Republican River Compact, C.R.S. § 37-50-101. On October 12, 2004 the District Board created a Water Activity Enterprise pursuant to the provisions of C.R.S. § 37-50-107 (1)(k) and Article 45.1 of title 37.

Pursuant to C.R.S. § 37-50-107(1)(m) the District is authorized to collect water use fees in order to support its Compact compliance activities. On October 9, 2008, the District Board of Directors, after an appropriate public process, determined that a fee of \$14.50 per irrigated acre, for all irrigated acres within the District, was necessary in order to achieve the Compact compliance mandate. The District Board of Directors decided to follow a three-pronged plan to ensure ongoing Compact compliance. The prongs were: 1) comprehensive water conservation; 2) retirement of irrigated acres utilizing the Conservation Reserve Enhancement Program (CREP), together with other similar programs including the acquisition of water rights; and 3) the construction of a Compact compliance pipeline.

In November 2008 the District borrowed sixty-million dollars (\$60,000,000.00) from the Colorado Water Conservation Board pursuant to Contract No. C150260. The money from this loan was used to acquire the ground water underlying approximately sixty (60) square miles in the Northern High Plains Ground Water Basin, the development of up to fifteen (15) production wells, a surge tank and a twelve (12) mile pipeline to the North Fork of the Republican River at a location approximately one-quarter (1/4) of a mile above the Nebraska state line, thus fulfilling the third prong. It should be noted that, at this time, almost one half (1/2) of that loan has been repaid.

As part of the second prong, the conservation and acreage retirement portion of the District's plan, there has been a concerted effort to buy and retire senior surface water rights diverting from the three branches of the Republican River. Those branches are the South Fork, the Arikaree and the North Fork. A total of thirty-four (34) separate water rights for a total of 172.22 cfs on these three streams have been acquired to date. In each instance the acquisition of the water right has been based upon a willing seller, willing buyer basis and in reliance on appropriate appraisals. The purpose of these acquisitions is to retire these senior surface water rights and to transfer them to in-stream flow, environmental enhancement and compact compliance purposes. By undertaking this multi-purposed prong of the program the RRWCD intends to improve and restore the flows of the Republican River to the extent possible, in furtherance of its Compact compliance mandate. The change in use necessary to achieve the instream purposes will be accomplished in accordance with the provisions of the Board's statutes.

During 2019 the RRWCD has acquired several senior water rights on tributaries of the North Fork of the Republican River and other water rights, including an additional one-third (1/3) of the largest water right on the South Fork of the Republican River, the Hale Ditch, giving the RRWCD control over two-thirds (2/3) of that irrigation ditch. The remaining one-third (1/3) of the ditch is owned and controlled by the Colorado Division of Parks and Wildlife.

In order to ensure that the remaining third of the Hale Ditch can be acquired and applied to instream and Compact compliance purposes the District finds that its acquisitions to-date have depleted its available acquisition fund balance. In order to allow it to complete these acquisitions it has applied for a loan in the amount of approximately five and one-half million dollars (\$5,500,000.00) from the Colorado Water Conservation Board. The loan will be repaid over

twenty (20) years from revenues derived from the \$14.50 per acre fee. Attached to this letter is a budget projection from the District showing that the District can maintain its current Compact compliance activities, complete the repayment of Compact Compliance Pipeline loan and complete the repayment of the five and one-half million dollar water acquisition loan sought by the District. Although there are five years from 2024 to 2028 when the District's available cash reserves dip to a fairly low level pursuant to this projection they are never at risk of going negative.

As long as the District commits to maintain the per acre fee of at least \$14.50 per irrigated acre during the life of this loan or a comparable funding mechanism that is capable of raising the same or greater amounts of annual revenues for the District, the District is fully capable of repaying this loan. The District has the legal authority to acquire real property, which includes water rights, C.R.S. § 37-50-107(l)(b). The District is authorized to borrow money, C.R.S. § 37-50-107(1)(c). The District Enterprise is similarly authorized to engage in this transaction.

This letter of opinion is based upon the understanding that the State Engineer will work with the District and the agricultural producers within the District boundaries to ensure that irrigated agriculture continues to be viable during the term of the loan and is not impaired or restricted by Compact restrictions or curtailments and that the State of Colorado takes those steps necessary to ensure that Colorado remains in compliance with the Republican River Compact.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Robbins', with a long horizontal flourish extending to the right.

David Robbins

cc: Rachel Pittinger, Project Manager, CWCB
Deb Daniel, General Manager RRWCD
Rod Lenz, President RRWCD