

EL PASO



COUNTY

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EL PASO BOARD OF COUNTY COMMISSIONERS

July 20, 2010

VIA FACSIMILE AND U.S. MAIL

Mr. Ray Alvarado
Water Information Section Chief
Colorado Water Conservation Board
1580 Logan St., Ste 200
Denver, CO 80203
ray.alvarado@state.co.us

RE: Comments on the Draft Phase I Colorado River Water Availability Study Report

Dear Mr. Alvarado:

Please consider this letter as formal comments to the Draft Phase I Colorado River Water Availability Study Report ("Study Report") by El Paso County by and through the Board of County Commissioners of El Paso County, Colorado ("Board"), a political subdivision of the State of Colorado. The Board has reviewed the comments prepared by Lytle Water Solutions, LLC ("LWS") by their President, Mr. Bruce Lytle, which were prepared for, and on behalf of, the Parker Water and Sanitation District ("PWSD"). The Board is familiar with, and is confident in, the work of Mr. Lytle through his work with the El Paso County Water Authority, of which the Board is a member, in preparing the El Paso County Water Report in 2002. The Board is familiar with Mr. Frank Jaeger's services on behalf of PWSD and on the South Platte Basin Roundtable to vigilantly pursue alternative water resources in this area of Colorado. The Board therefore supports and endorses LWS' analysis and PWSD's comments on the Study Report.

Through its involvement with the Water Authority and both the Arkansas Basin and South Platte Basin Roundtables, through its involvement with the Upper Black Squirrel Creek Designated Ground Water Basin recharge and water quality studies, and by its continued application of its 300 year water supply requirement for subdivision applications in the unincorporated area of El Paso County, the Board is very mindful of the

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scarce and valuable resource that water is to our high desert region and to the State. El Paso County continues to attract new residents, and has experienced high growth rates over the last several years. Much of that growth is dependent on non-renewable groundwater for its water supply. The Board is responsible for approving sufficient water supplies for subdivisions, and realizes that alternative sources of water are required for the future, not only for our County, but for the entire State. Therefore, we are concerned with the Study Report that will limit Colorado's full use of its Colorado River Compact water.

The Colorado Constitution declares the water of every natural stream within the state to be the property of the public dedicated to the use of the people of the state. § 5, Art. XVI, Colo. Const. The Board believes that the State of Colorado must take every opportunity to protect the public's property rights in the waters of the state. That means that the State of Colorado, through the Colorado Water Conservation Board ("CWCB"), must vigorously assert Colorado's rights in, and develop its full and rightful entitlement to Compact water under, both the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact.

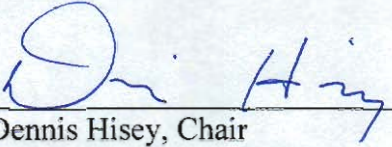
The Board agrees with LWS's conclusion that the Study Report results are based on questionable scientific analysis and thereby reaches flawed conclusions that will lead to bad public policy positions. The zero availability conclusion means there is no water left to be claimed in the Colorado River, and thus, no rights by the people of Colorado to appropriate any more Colorado River water for beneficial use. If CWCB approves the Study Report, it will have conceded and surrendered any position that Colorado could assert to claims for Colorado's full and rightful Compact entitlements. In other words, in response to any such future assertion by Colorado, California will simply cite to the Study Report and say "case closed" because CWCB has asserted there is zero water available so there would be no more water to which Colorado could claim entitlement. The people of El Paso County and Colorado lose.

The Board joins with Parker Water and Sanitation District and strongly recommends that the CWCB not finalize the Study Report until scientifically sound analysis has been applied; the Study Report has been revised, peer reviewed, and fully vetted; and sound scientific and public policy conclusions have been reached that will not preclude Colorado from asserting its full entitlement to Colorado Compact waters.

Thank you for considering the Board's comments.

Respectfully,

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Dennis Hisey, Chair

cc: William H. Louis, El Paso County Attorney
Jeff Greene, El Paso County Administrator
Max Rothschild, Interim Director, El Paso County Development
Services Department
Bruce A. Lytle, P.E., Lytle Water Solutions, LLC
Frank Jaeger, District Manager, Parker Water and Sanitation District