

PITKIN COUNTY ATTORNEY

John M. Ely
County Attorney

Courthouse Annex Building
530 East Main Street, Suite 302
Aspen, Colorado 81611-1948

Christopher G. Seldin
Assistant County Attorney

Tel: (970) 920-5190
Fax: (970) 920-5198

Carrington Brown
Code Enforcement Officer

Legal Assistants:
Lisa MacDonald
Jane Achey

July 21, 2010

Via Email to ray.alvarado@state.co.us

Ray Alvarado
Section Chief
Colorado Water Conservation Board
Water Information Section
1580 Logan Street Ste 200
Denver, CO 80203

RE: Phase I of the Colorado River Water Availability Study

These comments to the Phase I Colorado River Water Availability Study are being sent on behalf of the Pitkin County Board of County Commissioners.

The Pitkin County Board of County Commissioners endorses the comments made by our fellow West Slope colleagues and friends as drafts of those comments have been shared with us. Particularly, the Pitkin County Board of County Commissioners endorses those comments of the Colorado River Basin Roundtable.

Of particular concern to the County is Phase I's apparent understatement of the basin's non-consumptive flow needs. The non-consumptive needs component of the study should be enhanced and developed more completely as these needs are every bit as legal and necessary a component to river health, economic vitality and the quality of life for Western Slope residents as consumptive water needs.

It would appear that because non-consumptive uses do not permanently deplete stream flows, the Phase I report would conclude that this water is therefore available for other potential future needs. If this is a working assumption, it could not be further from a realistic approach to an accurate water availability study.

All types of non-consumptive needs should be analyzed within Phase II, not only those necessary for "minimum stream flows" but those necessary for the continued environmental health and a healthy fishery, those flows required and identified for the protection of endangered fish species and those flows necessary for the generation of hydro-electric power.

Mr. Ray Alvarado

Page 2

July 21, 2010

The assumption used for minimum stream flows should not merely echo those adjudicated amounts held by the CWCB but should consider overall aquatic and riparian health including needed flushing flows and winter sustainability flows.

The United States Fish and Wildlife Service Programmatic Biological Opinion requirements for the fifteen mile reach should be reflected as a senior right to future uses as this obligation from the USFW to water consumers is not somehow made a conditional obligation to those water consumers.

Additionally, to be accurate, non-consumptive flow needs should be planned for under more severe climate change models and prolonged below average precipitation cycles. At the very least, the longer period of climatological modeling, that to the year of 2070, should be relied upon and not discounted because its conclusions are not politically palatable.

Finally, the conclusion that available water supplies are within the range from 0 to 1 million acre feet tends to discredit the entire study effort. The range is of course far too broad to be meaningful.

Phase II of the Water Availability Study should utilize realistic flow data, with defensible assumptions and modeling, to produce a more useful conclusion that can be supported by water users and the general public.

Thank you for the opportunity to comment and we look forward to reviewing Phase II.

Sincerely,

A handwritten signature in black ink, appearing to be 'John M. Ely', written over a horizontal line.

John M. Ely
County Attorney