

# STATE OF COLORADO

## OFFICE OF THE EXECUTIVE DIRECTOR

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OCT 24 2007



DEPARTMENT OF  
NATURAL  
RESOURCES

Bill Ritter, Jr.  
Governor

Harris D. Sherman  
Executive Director

The Honorable Bill Ritter, Jr.  
Governor of Colorado  
136 State Capitol  
Denver, CO 80203

The Honorable Joan Fitzgerald  
President of the Senate  
136 State Capitol  
Denver, CO 80203

The Honorable Andrew Romanoff  
Speaker of the House  
136 State Capitol  
Denver, CO 80203

The Honorable Jim Isgar  
Chair of the Interim Committee on Water Resources.  
136 State Capitol  
Denver, CO 80203

From Director Sherman and Commissioner Stulp

Date: September 30, 2007

Dear Governor Ritter, President Fitzgerald, Speaker Romanoff and Senator Isgar:

We are writing this letter to you in accordance with the Governor's June 8, 2007 Executive Order creating the South Platte River Basin Task Force.

This letter is sent to you on behalf of all the South Platte Task Force members including Greg Brophy, Steve Bruntz, Kathleen Curry, Harold Evans, Cory Gardner, Arnie Good, Harold Griffith, Ted Harvey, Mary Hodge, Jim Isgar, Joe Kiolbasa, Randy Knutson, Rebecca Love Kourlis, Frank McNulty, Manual Montoya, Jack Pommer, Brandon Shaffer, Hal Simpson, Jerry Sonnenberg, Brad Stromberger, Jim Yahn, and the South

Platte Task Force support team Anne Castle, Alexandra Davis, Jim Hall, Jim Lochhead, Jim Miller and Dick Wolfe

September 6, 2007 was the last meeting of the South Platte Task Force. The Task Force met six times over the past four months. The first two meetings were devoted to gathering public comment, perception, and information regarding the well issues in the South Platte. During the last four of the six meetings, the Task Force deliberated over the issues and a range of proposed recommendations. Materials provided to and reviewed by the Task Force were contemporaneously posted on a Task Force web page on the Colorado Department of Agriculture web site, allowing all interested members of the public access to the documents.

The Members were provided with a significant amount of information to absorb and understand in a short period of time. The Members worked hard and diligently to discuss potential solutions in their effort to achieve the objectives set forth in the Executive Order.

Given that the root of the well problems on the South Platte is simply that there is not enough water in most years to meet all the water demand and decreed appropriations, few people expected a silver bullet to emerge from the Task Force discussions. Further, the various Members' theories regarding potential solutions ranged from those seeking to maintain the current system with no changes whatsoever to those seeking to institute an entirely new paradigm for distribution of water in Colorado. Thus, the idea that the Task Force would reach consensus on any recommendations was not a given. However, the Task Force did agree to ten recommendations out of more than 20 suggested. These are incremental but important recommendations that cumulatively may provide some relief to some well users and may help improve Colorado's water allocation and distribution system.

In addition, there were some recommendations considered that did not garner the 2/3<sup>rd</sup> support required by the Executive Order that may provide legislators or policy makers food for future thought. For example, there was a recommendation for the creation of a South Platte Water Conservation District. Such a district could provide an entity that would be charged with developing regional solutions. A full list of all the proposals voted upon is attached to this letter.

Because there is no easy solution to the problems faced by well users on the South Platte, some well users may be disappointed that the Task Force did not determine a means by which those with curtailed wells could resume pumping their wells. We believe, however, that the Task Force members strove to provide practical recommendations consistent with the direction to provide some relief to well users without injuring senior water rights.

**The following recommendations are hereby made by the South Platte River Basin Task Force** to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chair of the Interim Committee on Water Resources.

1. New water storage is a necessary and essential component of resolving the water crisis on the South Platte River. Therefore, the South Platte Task Force recommends the support of the expansion and dredging of existing reservoirs and the construction of new reservoirs including underground storage.

**Passed 20/1 (for/against) (Stulp and Harvey absent)**

2. The Task Force recommends that continued funding be provided to ensure completion of the South Platte Decision Support System as soon as possible.

**Passed 23/0**

3. The Task Force recommends that the South Platte Decision Support System team continue its comprehensive study to evaluate the limits of current science and technology to accurately quantify the amount and timing of well pumping depletions to the river, with appropriate peer review, so as to ensure that policy and law is created on the basis of the best modeling possible.

**Passed 16/7**

4. The Task Force recommends that the Legislature enact legislation that would provide more flexibility for the use of excess augmentation credits, only for replacement of current year depletions caused by past well pumping, with the notice and comment process and expedited review set forth in C.R.S. § 37-83-105. This includes but is not limited to looking at the water loan statute (C.R.S. § 37-83-105) as an appropriate statute within which provide this flexibility.

**Passed 17/6**

5. The Task Force recognizes that there is increasing pressure being applied to the Water Courts in the State, due to competition for water, recent case law and evolving technology. The Task Force has also received testimony from a number of individuals that the Water Court process is cumbersome, time-consuming and can be extremely expensive.

The study could include consideration of:

- appointment of senior judges as alternate water judges
- permitting the appointment of special masters in water court proceedings – with the possibility that the water court referees could themselves serve in that role
- a requirement that water court referees be professional engineers
- imposition of procedural time requirements in proceedings before the referee, such as application of Rules 16 and 26
- mandatory annual training for water judges and referees both in water law and in the engineering, technological and scientific issues and advancements, in

cooperation with the Law Schools, the Water Bar and the State Engineer's Office

The Task Force recommends that the Governor and/or the General Assembly request the Colorado Supreme Court to undertake and complete within six months a study of the Water Courts in the State and identify possible ways to achieve efficiencies, while still protecting quality outcomes.

**Passed 21/2**

6. The Task Force recommends that the Legislature and/or the Department of Natural Resources support any South Platte water entity in pursuing a CREP or EQIP program to the same extent that the State has supported other entities, such as the Republican River Water Conservation District, in pursuing CREPs or EQIP in other parts of the state and the Task Force supports encouraging the Colorado Delegation to support amendments to the 2007 Farm Bill to allow use of these programs in the South Platte River Basin.

**Passed 17/6**

7. Because the South Platte well rules did not go into effect until 1974 and therefore well pumping prior to 1974 did not require augmentation, the Task Force recommends that the Legislature enact legislation providing that augmentation is not required for current depletions caused by pumping prior to 1974. .

**Passed 17/6**

8. The Task Force recommends that the Governor and the Department of Natural Resources encourage Colorado's Congressional Delegation to encourage federal funding of the study to reallocate space in Chatfield Reservoir to allow more storage.

**Passed 23/0**

9. The Task Force recommends that the Legislature consider legislation that would expand provisions under the water banking act to allow sources of water other than stored water (e.g. changed water rights, underground storage, trans-mountain water) to be put into a water bank and applied to other decreed augmentation plans as an additional water supply.

**Passed 16/7**

10. The Task Force recommends that the Legislature continue to support the Senate Bill 07-122 study regarding "alternative to dry up" of agricultural land for banking, fallowing, interruptible supply, and alternative crops which allows partial dry up.

**Passed 20/3**

Please let us know if we can provide any further information regarding the South Platte Task Force.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Wanda Sherman".

Director Sherman

A handwritten signature in cursive script, appearing to read "John R. Stulp".

Commissioner Stulp

## **MEMORANDUM**

Date: September 18, 2007

Results of South Platte River Basin Task Force deliberations on the proposed recommendations

### **Passed recommendations**

#### **1. Storage:**

New water storage is a necessary and essential component of resolving the water crisis on the South Platte River. Therefore, the South Platte Task Force recommends the support of the expansion and dredging of existing reservoirs and the construction of new reservoirs including underground storage.

#### **Passed 20/1 (Stulp and Harvey absent)**

#### **2. SPDSS:**

The Task Force recommends that continued funding be provided to ensure completion of the SPDSS as soon as possible.

#### **Passed 23/0 (for/against)**

The Task Force recommends that the SPDSS team continue its comprehensive study to evaluate the limits of current science and technology to accurately quantify the amount and timing of well pumping depletions to the river, with appropriate peer review, so as to ensure that policy and law is created on the basis of the best modeling possible.

#### **Passed 16/7 (for/against) (opposition was to “to ensure policy and law is created on the basis of)**

3. The Task Force recommends that the Legislature enact legislation that would provide more flexibility for the use of excess augmentation credits, only for replacement of current year depletions caused by past well pumping, with the notice and comment process and expedited review set forth in C.R.S. § 37-83-105. This includes but is not limited to looking at the water loan statute (C.R.S. § 37-83-105) as an appropriate statute within which provide this flexibility.

#### **Passed 17/6**

4. The Task Force recognizes that there is increasing pressure being applied to the Water Courts in the State, due to competition for water, recent case law and evolving technology. The Task Force has also received testimony from a number of sources that

the Water Court process is cumbersome, time-consuming and can be extremely expensive.

The study could include consideration of:

- appointment of senior judges as alternate water judges
- permitting the appointment of special masters in water court proceedings – with the possibility that the water court referees could themselves serve in that role
- a requirement that water court referees be professional engineers
- imposition of procedural time requirements in proceedings before the referee, such as application of Rules 16 and 26
- mandatory annual training for water judges and referees both in water law and in the engineering, technological and scientific issues and advancements, in cooperation with the Law Schools, the Water Bar and the State Engineer's Office

The Task Force recommends that the Governor and/or the General Assembly request the Colorado Supreme Court to undertake and complete within six months a study of the Water Courts in the State and identify possible ways to achieve efficiencies, while still protecting quality outcomes.

**Passed 21/2**

5. The Task Force recommends that the Legislature and/or the Department of Natural Resources support any South Platte water entity in pursuing a CREP or EQIP program to the same extent that the State has supported other entities, such as the Republican River Water Conservation District, in pursuing CREPs or EQIP in other parts of the state and the Task Force supports encouraging the Colorado Delegation to support amendments to the 2007 Farm Bill to allow use of these programs in the South Platte River Basin.

**Passed 17/6**

6 Because the South Platte well rules did not go into effect until 1974 and therefore pumping prior to 1974 did not require augmentation, the Task Force recommends that the Legislature enact legislation providing that augmentation is not required for current depletions caused by pumping prior to 1974. .

**Passed 17/6**

7 The Task Force recommends that the Governor and DNR encourage Colorado's Congressional Delegation to encourage federal funding of the study to reallocate space in Chatfield for more storage.

**Passed 23/0**

8 The Task Force recommends that the Legislature consider legislation that would expand provisions under the water banking act to allow sources of water other than stored water to be put into a water bank (e.g. changed water rights, underground storage, trans-mountain water) and applied to other decreed water plans as an additional water supply.

**Passed 16/7**

9 The Task Force recommends that the Legislature continue to support the Senate Bill 07-122 study regarding "alternative to dry up" of agricultural land for banking, fallowing, interruptible supply, and alternative crops which allows partial dry up.

**Passed 20/3**

**Failed Recommendations:**

1 The Task Force recommends that legislation is needed for a moratorium to permit pumping for 2008 and 2009, at some realistic level, for wells in plans or who have made application for plans.

**Failed 3/20 (for/against)**

2 The Task Force recommends that the Legislature enact legislation that would allow prepayment of depletions during the winter storage season.

**Failed**

3 The Task Force recommends that the Legislature empower the SEO to administer aggregated winter depletion replacements in such a way as to prevent injury to senior water rights.

**Failed 4/19**

4 The Task Force recommends that the South Platte Roundtable explore the idea of whether a South Platte Water Conservation District would be of benefit to the region.

**Failed 14/8 (McNulty out of the room)**

5 The Task Force recommends that the Legislature enact legislation that would allow the temporary use of fully consumable water in decreed augmentation plans through a SWSP without having to amend the decreed plan.

**Failed 13/10**



6 The Task Force recommends that the Legislature enact legislation that would remove augmentation obligations for wells that are such a substantial distance from the South Platte River that they have small to no impact on the River.

**Failed 3/20**

7 The Task Force recommends that the Legislature support by resolution the Yampa River pump-back project.

**Failed 10/13**

8. The Task Force recommends that legislation is needed to require that objectors plead affirmatively facts showing demonstrable injury suffered by the objector attributable to pumping (as certified by qualified engineers) as part of substantive objections to plans for augmentation. This recommendation is in the spirit of Becky Kourlis' 'amount of process' suggestion. (If 2a is undertaken and the result is a better and more accurate quantification of injury from physical data vs. hypothetical data, much of the legal presumption in regards to injury could and would be eliminated.)

**Withdrawn**

9. The Task Force recommends that the Legislature enact legislation that would expand the State Engineer's rule making authority to allow water users affected by ground water use rules a reasonable period of time such as five years to file a plan for augmentation and in the interim allow the State Engineer to annually approve a substitute water supply plan if it meets the requirements of the rules.

**Failed 12/11**

Ideas that were 'tabled':

- Amending 37-80-120 to allow different source of replacement water
- Amending 308(4) to allow wells users more time to operate under SWSPs before augmentation plans are filed with the water court.
- Changing the law on salvage water

- Financial bonding for dry years
- Support for the Central Colorado Project