DECEMBER 15, 2023

FINAL REPORT

COLORADO RIVER Drought Task Force

COLORADO RIVER
Drought Task Force

TASK FORCE MEMBERS

Drought Task Force Members

NAME	ROLE ON DROUGHT TASK FORCE	ORGANIZATION OR SOVEREIGN NATION
Orla Bannan	Representative of a statewide environmental nonprofit organization with expertise in water rights and Colorado River interstate governance	Western Resource Advocates
Jackie Brown	Representative of an industrial water user located on the western slope	Tri-State Generation and Transmission Association
Mike Camblin	Representative of a statewide agricultural organization that is the owner of water rights	Rancher; Colorado Cattlemen's Association
Kathy Chandler-Henry	Non-voting Chair	Eagle County Commissioner
Aaron Citron	Representative of a statewide environmental nonprofit organization with expertise in water rights and Colorado River interstate governance	The Nature Conservancy
Alex Davis	Representative of a front range municipal water provider that diverts water from the Colorado River	Aurora Water
Kate Greenberg	Commissioner of Agriculture	Colorado Department of Agriculture
Daris Jutten	An agricultural producer that owns water rights within the boundaries of the Colorado River Water Conservation District	Farmer; Uncompahgre Valley Water Users Association
Randi Kim	Representative of a local government located within the boundaries of the Colorado River Water Conservation District that provides water for municipal purposes.	City of Grand Junction
Gerald Koppenhafer	Agricultural producer that owns water rights within the boundaries of the southwestern water conservation district	Farmer; Montezuma Valley Irrigation Company
Lee Miller	Representative of Southeastern Colorado Water Conservancy District	Southeastern Colorado Water Conservancy District
Andy Mueller	Representative of Colorado River Water Conservation District	Colorado River Water Conservation District
Kevin Rein	State Engineer; non-voting member	Division of Water Resources, Colorado Department of Natural Resources

Kelly Romero-Heaney	The Executive Director of the Department of Natural Resources or the Director's designee	Colorado Department of Natural Resources
Kyle Whitaker	Representative of Northern Colorado Water Conservancy District	Northern Colorado Water Conservation District
Steve Wolff	Representative of Southwestern Water Conservation District	Southwestern Water Conservation District
Letisha Yazzie	Representative of Ute Mountain Ute Tribe	Ute Mountain Ute Tribe
Lisa Yellow Eagle	Representative of Southern Ute Indian Tribe	Southern Ute Indian Tribe
Melissa Youssef	Representative of a local government within the boundaries of the Southwestern Water Conservation District that provides water for municipal purposes	City of Durango

Sub-Task Force Members

NAME	ROLE ON SUB-TASK FORCE	ORGANIZATION OR SOVEREIGN NATION
Celene Hawkins	Two other members jointly appointed by the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, and the Department	The Nature Conservancy
Becky Mitchell	The Executive Director of the Department of Natural Resources or the Director's designee	Colorado Department of Natural Resources
Steve Wolff	Two other members jointly appointed by the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, and the Department	Southwestern Water Conservation District
Letisha Yazzie	Representative of Ute Mountain Ute Tribe	Ute Mountain Ute Tribe
Lisa Yellow Eagle	Representative of Southern Ute Indian Tribe	Southern Ute Indian Tribe

Alternate Members of the Drought Task Force

NAME	ALTERNATE FOR	ORGANIZATION OR SOVEREIGN NATION
Allison Baker	Melissa Youssef	City of Durango
Jordan Beezley	Kate Greenberg	Colorado Department of Agriculture

Jim Broderick	Lee Miller	Southeastern Colorado Water Conservancy District
Carlyle Currier	Mike Camblin	Farmer; Colorado Farm Bureau
Nancy Fishering	Daris Jutten	Farmer; Uncompahgre Valley Water Users Association
Peter Fleming	Andy Mueller	Colorado River Water Conservation District
Celene Hawkins	Aaron Citron	The Nature Conservancy
Amy Huff	Steve Wolff	Southwestern Water Conservation District
Erin Kearney	Mike Camblin	Colorado Cattlemen's Association
Jose Madrigal	Melissa Youssef	City of Durango
Rick Marsicek	Alex Davis	Denver Water
Bart Miller	Orla Bannan	Western Resource Advocates
Peter Nylander	Lisa Yellow Eagle	Southern Ute Indian Tribe
Les Owen	Kate Greenberg	Colorado Department of Agriculture
Dave Payne	Randi Kim	Ute Water Conservancy District
Steve Pope	Daris Jutten	Uncompahgre Valley Water Users Association
Mike Preston	Letisha Yazzie	Ute Mountain Ute Tribe
Jason Ullman	Kevin Rein	Division of Water Resources, Colorado Department of Natural Resources

Legislative Charge

At the request of the Colorado General Assembly, the Colorado River Drought Task Force and Sub-Task Force on Tribal Matters, formed by Senate Bill 295 in 2023, with The Langdon Group, Inc., prepared this report of recommendations for and narratives on drought resilience in the Colorado River Basin. This report identifies areas of opportunity for legislative action and continued discussion that prioritizes the well-being of Coloradans and citizens of sovereign nations, but does not cause undue harm to any residents, citizens of sovereign nations, or the environment of the State of Colorado.

TABLE OF CONTENTS

CLICK TO JUMP TO REPORT SECTION

Kathy Chandler-Henry

Chair, Colorado River Drought Task Force

15 December, 2023

Dear Members of the Colorado State General Assembly,

It is with great pride that I transmit this report to you from the Colorado River Drought Task Force.

Drought, exacerbated by hotter temperatures, declining levels of precipitation, dry soils, and overuse in the Lower Basin have put the state's namesake river – as well as our communities and economies – in peril. In SB23-295, the General Assembly charged the Task Force with providing recommendations for legislation to address drought in the Colorado River Basin and ensure the state can meet its interstate commitments related to the Colorado River and its tributaries. This report details eight recommendations from the Drought Task Force and four recommendations from the Sub-Task force on Tribal Affairs, as well as discussions of additional potential tools and programs to address drought.

Members of the Drought Task Force met twice a month from July 31st through December 7th at locations on the western slope and in the metro area. They held vigorous conversations, learned from one another, and formulated the foundation for potential legislation and further work on issues related to demands on the Colorado River. Recognizing the gravity of the assignment before them and the short window to develop recommendations, Task Force members were generous with their time and expertise. Discussions were courteous, and opposing viewpoints led to more robust proposals. Each of the recommendations in the report were thoughtfully considered and revised by Task Force members, and reviewed and commented on by constituency groups and the public.

There is more to do. Ongoing work is needed on Intra- and Interstate actions to be resilient in the face of drought and meet Colorado River Compact obligations. I am hopeful that the recommendations and narratives provided here will serve as a jumping off point for the legislature, and will begin to pave the way towards securing a healthy future for the river and all who depend on it.

If there's a river that flows through the lives and hearts of everyone, the Colorado River is a strong candidate. On behalf of the Colorado River Drought Task Force, I am honored to submit this report to the Colorado State General Assembly. We stand ready to help move these proposals forward.

Sincerely,

Kathy Chandler-Henry, Chair

COLORADO RIVER
Drought Task Force

RECOMMENDATIONS IN BRIEF

The Colorado River Drought Task Force and the Sub-Task Force on Tribal Matters were created by SB23-295. The Drought Task Force met 10 times and the Sub-Task Force met six times between July and December of 2023. The Drought Task Force and Sub-Task Force developed a comprehensive list of tools, programs, and resources that had the potential to increase drought resiliency for those who depend on the waters of the Colorado River within the state's boundaries and the sovereign nations lying within those boundaries. Both groups developed agreed upon principles guiding their discussion and research, culminating in a list of recommendations for the legislature which were voted on by members of the Drought Task Force and Sub-Task Force.

Recommendations voted on and approved by the Drought Task Force and Sub-Task Force are a recommendation of the concept, not the specific language of the proposal, and should be read with this in mind. To be approved, a proposed item needed a majority of votes, and tallies are included in the body of the report along with comments from Drought Task Force members. Proposed recommendations that were not approved are preserved in this report under the section "Recommendations Considered but Not Approved."

Additional items discussed by the Drought Task Force and Sub-Task Force were included in a narrative section to capture important discussions. **Items included in the narratives were not voted on by the Drought Task Force or the Sub-Task Force and therefore, as written, have not been endorsed or vetted by either entity.**

Drought Task Force Recommendations

The Colorado River Drought Task Force requests the Colorado General Assembly consider the following Recommendations for Legislative action:

1.	**Continue Technical Assistance Grants**	WE RECOMMEND that the Colorado General Assembly continue funding the Technical Assistance Grant program using state funds at a level recommended by the Colorado Water Conservation Board to be consistent with demand.
2.	**Provide Increased Funding Throughout State for Aging Water-Related Infrastructure**	WE RECOMMEND that the Colorado General Assembly increase funding levels throughout state programs for aging water-related infrastructure, which could include replacing and upgrading diversion structures, headgate and conveyance efficiency improvements.
3.	**Prioritize Forest Health and Wildfire Ready Watersheds**	WE RECOMMEND that the Colorado General Assembly add stronger criteria for state funding for Community Wildfire Protection Plans.
4.	**Expansion of Temporary Loan Program to include Storage Rights**	WE RECOMMEND that the Colorado General Assembly amend the instream flow temporary loan program statute to allow the owner of a decreed storage water right to loan water to the CWCB to preserve or improve the natural environment to a reasonable degree on stream reaches where there is no decreed instream flow water right.

5.	**Expansion of Agricultural Water Rights Protection Beyond Divisions 1 & 2**	WE RECOMMEND that the Colorado General Assembly expand the Agricultural Water Rights Protection program, which creates opportunities for agricultural water rights holders to make water temporarily available for other uses while keeping water in agriculture, beyond Divisions 1 and 2 to agricultural water rights holders statewide.
6.	**Continue State Funding of Measurement Tools**	WE RECOMMEND that the Colorado General Assembly continues funding state-wide efforts to improve measurement of streams and expand snowpack measurements using LiDAR for larger scale basin-wide projects. In addition, for smaller localized projects, state funding mechanisms for these projects should include a requirement for measurement devices to demonstrate water efficiencies.
7.	**Invasive Phreatophyte and Species Removal**	WE RECOMMEND that the Colorado General Assembly consider funding a state-wide assessment of changes in riparian plant communities, the state of riparian ecosystem function and those impacts to water resources associated with invasive phreatophytes. Further, the legislature should address increasing the Colorado Department of Agriculture's noxious weed removal enforcement program. We recommend this program support the additional planning, monitoring, maintenance, and capacity needs for noxious weed removal projects to increase effectiveness.
8.	**Increase Funding and Support of Municipal Turf Removal**	WE RECOMMEND that the Colorado General Assembly consider increasing funding levels of the Turf Removal Program to $5 million per year and increasing the amount one entity can access.

Sub-Task Force on Tribal Matters Recommendations

The Sub-Task Force on Tribal Matters requests the Colorado General Assembly consider the following Recommendations for Legislative action:

1.	**Request for funding to study a potential pilot program to compensate Tribes for future forbearance of water development.**	WE RECOMMEND and request that the Colorado General Assembly provide a grant to the Southern Ute Indian Tribe and Ute Mountain Ute Tribe to engage in an expert analysis of the quantity of water potentially available, the impacts of contributing that water to the Colorado River system, the appropriate level of compensation, funding sources for a pilot program, potential benefits for all involved, and all additional technical, legal, and fiscal details of such a program.

2.	**Letter of Support from Colorado General Assembly and Governor Polis for Appropriation of Indian Irrigation Fund in Congress**	WE RECOMMEND and request that the Colorado General Assembly work with Governor Polis to send a letter to the U.S. Congress to request that it fully appropriate $35 million that is authorized for the Indian Irrigation Fund pursuant to the Water Infrastructure Improvements for the Nation Act ("WIIN Act," Pub. L. No. 114-322).
3.	**Ability to Waive Match**	WE RECOMMEND that the Colorado General Assembly remove the statutory requirement in C.R.S. 37-60-106.3 6(c) for matching funds of at least twenty-five percent for Water Plan Implementation Grants and provide the Colorado Water Conservation Board discretion to waive or reduce matching fund requirements for grants to Tribal Nations and Tribal enterprises. The Sub-Task Force also recommends that the Colorado Water Conservation Board review policies and procedures on waiving or reducing Colorado Water Conservation Board grant match requirements with the Southern Ute and Ute Mountain Ute Tribes to facilitate the Colorado Water Conservation Board's consideration of specific Tribal requests to waive matching requirements.
4.	**Cultural Protection of In Stream Flow**	WE SUPPORT The Ute Mountain Ute Tribe in their request to the Colorado General Assembly for the opportunity to work with the relevant state agencies and stakeholders in order to determine whether there is a suitable mechanism to include cultural values for protection in in-stream flows and whether there are locations within the state where such protections may be implemented. The parties agree to engage in a broad stakeholder process prior to moving forward with any legislative changes.

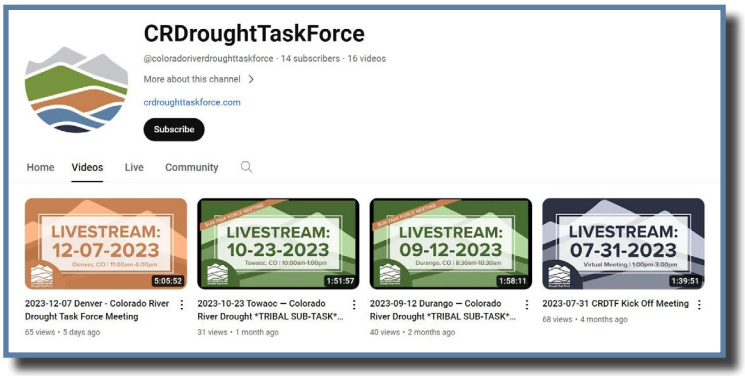
SUMMARY OF WORK & PROCESS

The following section provides a summary of the work and process by the Colorado River Drought Task Force and the Sub-Task Force on Tribal Matters.

Drought Task Force

Meetings Overview

The Drought Task Force met a total of 10 times between July and December of 2023 – roughly every other week. The first meeting occurred on Monday, July 31st virtually through Zoom. At the first in-person meeting, Thursday, August 10th, the Drought Task Force voted to prioritize meeting in person as much as possible in consideration of scheduling challenges and budgetary constraints. They met six more times in person, for a total of seven in-person meetings and three virtual meetings over Zoom.



All meetings included a Zoom webinar feature with the Drought Task Force as panelists and members of the public could watch as attendees. Members of the public were welcome to observe in-person meetings as well. The meetings were also live streamed on YouTube and on the Drought Task Force's website, www.crdroughttaskforce.com. This meant that almost all recordings were immediately available after the meeting ended, except in two cases: July 31st meeting where the livestream was not yet set up and the December 7th meeting in which the livestream experienced connection issues. In both cases, the backup recording was made available for members of the public to watch.

440 PUBLIC ATTENDEES
ACROSS ALL MEETINGS
VIRTUAL & IN-PERSON

1,344 YOUTUBE VIEWS
DROUGHT TASK FORCE MEETINGS

December 15
FINAL REPORT DUE

Phase 1: Assessment

AUGUST

TASK FORCE MEETING
Thursday, August 10 | 12:00-4:00pm
COMPLETE

TASK FORCE MEETING
Thursday, August 31 | 12:00-4:00pm
COMPLETE

Phase 2: Developing Recommendations

SEPTEMBER

TASK FORCE MEETING
Thursday, September 14 | 12:00-4:00pm
Grand Junction, CO
Adopt Guiding Principles/Criteria; Intrastate Programs "Recommendations"; Review tools

TASK FORCE MEETING
Thursday, September 28 | 12:00-4:00pm
Granby, CO
Wrap up remaining Intrastate items; Interstate Programs; review tools/ideas

OCTOBER

TASK FORCE MEETING
Thursday, October 12 | 12:00-4:00pm
Ignacio, CO
Interstate Tools Discussion

TASK FORCE MEETING
Thursday, October 26 | 12:00-4:00pm
Towaoc, CO
Add detail to initial recommendations; Feedback on what additions are needed

NOVEMBER

TASK FORCE MEETING
Thursday, November 9 | 9:30am-4:00pm
Glenwood Springs, CO
Report Drafting

TASK FORCE MEETING
Thursday, November 16 | 12:00-4:00pm
Virtual
Report Drafting (if additional time is needed)

Phase 3: Finalizing Recommendations

DECEMBER

TASK FORCE MEETING
Thursday, December 7 | 12:00-4:00pm
TBD
Incorporate public feedback into final report recommendations

Public Comment Opportunity

Public Notice of Meetings, Agendas and Meeting Minutes

Meeting dates were established prior to the first Drought Task Force meeting by the chair and facilitators. Initially, while the Task Force website was being developed, the first two meetings (July 31st and August 10th) were announced on the Colorado Legislature website. The Task Force website went live on August 3rd, 2023 and all meetings were noticed on the website and sent out to the 89 members of the public on the "Interested Parties" email list. In addition, meetings were announced through social media outlets, including Facebook and Instagram (@crdroughttaskforce). Requests for public comment were made through the email list and social media outlets.

Draft agendas were posted a minimum of five days before the meeting, with most posted seven days prior to the meeting. Final agendas were posted between one and three days before the meetings. Agendas were developed by the facilitators and Chair Chandler-Henry, based on topics and items requested by Drought Task Force members. Draft agendas were modified based on feedback from Drought Task Force members and changing circumstances. Draft meeting minutes were made available through the website when possible and final meeting minutes were posted after approval by the Drought Task Force. At the September 14th Task Force meeting in Grand Junction, a motion was made and passed by the Drought Task Force to focus meeting minutes on Motions/Votes and actions taken by the Drought Task Force rather than detailed minutes in order to not mischaracterize discussions, with references to the time of the discussion in the recording. This motion was passed unanimously by the Drought Task Force.

Open Meetings Law and Colorado Open Records Act

Prior to the first Drought Task Force meeting, the facilitators and chair were made aware that the Task Force was considered subject to Open Meetings Law (OML) and the Colorado Open Records Act (CORA). The facilitators worked with the Office of Legislative Legal Services (OLLS) to provide information to the Drought Task Force on what this meant for their interactions and the development of any Drought Task Force recommendations and Final Report. Megan McCall from OLLS presented at the August 10th meeting and answered questions from Drought Task Force members for how to handle future interactions.

To comply with OML and CORA, as well as encourage public engagement with the Drought Task Force, all documents shared with or by Drought Task Force members were posted on the Task Force website on the Resources page. Drought Task Force members were discouraged from engaging in conversation with one another about Drought Task Force business outside of meetings and encouraged to send communications outside of meetings through the facilitators who were not Drought Task Force members. All meetings were made available to the public virtually through a zoom

webinar and livestream and recordings were posted on the website. Members of the public were invited to attend meetings in-person. Several members of the Drought Task Force who are also Colorado Water Conservation Board (CWCB) directors or members of the Interbasin Compact Committee (IBCC) were invited to sit on a panel to discuss the work of the Drought Task Force at the C9 Roundtable Summit hosted by the CWCB. Notice was given through the Task Force website and the CWCB website. The panel was open to the public and live streamed via the CWCB website at the request of Drought Task Force members.

Public Comment

At the August 10th meeting, the Drought Task Force discussed and voted to hold up to one hour for public comment at the beginning of each Drought Task Force meeting beginning with the August 31st meeting. A total of 83 members of the public provided comments over the next eight meetings. In addition, written public comment was received and shared with Drought Task Force members through email to the facilitators or the public comment box on the website. These written items were shared via email with Drought Task Force members and alternates and organizational emails were posted to the website under "Resources > Additional Resources." A total of 97 written public comments were received from members of the public, organizations, groups, agencies, and elementary school students. Individual Drought Task Force members heard from a variety of constituents, held meetings to receive feedback, or received emails from members of the public throughout the duration of the Task Force. The Colorado River Drought Task Force was featured in 15 news articles. The interested parties list consists of 89 different individuals, groups, and agencies.

83 MEMBERS OF THE PUBLIC
PROVIDED COMMENT OVER 8 MEETINGS

97 COMMENTS SUBMITTED
FROM THE PUBLIC, AGENCIES & GROUPS

15 MEDIA ARTICLES

Drought Task Force Meeting Topics and Process of Developing Recommendations

The first meeting focused on Task Force members introducing themselves to each other and the public, the role they had been nominated to fill on the Task Force, per SB23-295, and their hopes and concerns for the Task Force overall. The second meeting, hosted by Aurora Water on August 10th, focused on discussing overarching principles that united the group, information from OLLS on OML and CORA, discussion on the goals of the Drought Task Force, and information on resources shared with the Drought Task Force. At this meeting, the Drought Task Force identified three key principles that carried through the rest of the discussions: first that any recommendations made by the Drought Task Force must do no harm (with the recognition that this could be defined in different ways), that the Drought Task Force should put Colorado first before other downstream users of the Colorado River, and agreement that Lower Basin overuse of the Colorado River was a key driver of issues Colorado River water users faced.

The third meeting, held virtually, August 31st, established a basic timeline for discussions moving forward and agreement amongst Drought Task Force members to start with discussion on Intrastate Tools for drought resilience.

Between the third and fourth meeting, Drought Task Force members began populating a spreadsheet with various tools divided into Intrastate and Interstate tools. This spreadsheet was added to the website as a shared document that could be updated in real time. Discussion of Intrastate tools began at the September 14th meeting in Grand Junction at Colorado Mesa University. Drought Task Force members agreed to move several tools forward for further discussion including increased funding support for aging irrigation infrastructure. The September 28th meeting in Granby, hosted by Northern Water, continued discussion on Intrastate tools.

The Drought Task Force began discussing Interstate tools and voted to lengthen future meetings by one hour at the October 12th meeting in Ignacio, where they were hosted by the Southern Ute Indian Tribe. Drought Task Force members and members of the public were invited to attend a tour hosted by the Southern Ute Indian Tribe of water infrastructure on the reservation. The October 26th meeting in Towaoc was hosted by the Ute Mountain Ute Indian Tribe. Drought Task Force members and members of the public were invited to attend a tour of water infrastructure and the farm and ranch operations on the reservation. During the meeting, Drought Task Force members heard a presentation on Tribal Water Rights from the Sub-Task Force on Tribal Matters, continued discussing tools from the tools spreadsheet, as well as prioritization of which tools to focus on. Due to technical challenges, Drought Task Force members switched to utilizing their laptops to record sound during the meeting, capturing the audio of the discussion more clearly.

The eighth meeting, held November 9th, hosted by the Colorado River Water Conservation District (CRWCD or Colorado River District) in Glenwood Springs, was an all-day meeting where Drought Task Force members concentrated on refining concepts from the Tools worksheet to a shorter list and suggesting revisions or edits. The Drought Task Force agreed to a timeline holding off voting until their December 7th meeting, after which the Final Report would be assembled allowing for time – though short – for revisions of ideas and public review and comment of proposals up for vote. Drought Task Force members also elected to divide Intra- and Interstate Tools into items for a narrative section in the report, which would document the discussions engaged in by Drought Task Force members, in addition to the section of Task Force Recommendations for the legislature, as required by SB23-295. Discussion of Inter- and Intrastate tools put forward by Drought Task Force members continued at a virtual meeting on November 16th.

Tools moved forward by Drought Task Force members were refined in a shared google doc, hosted on the Task Force website, where members of the public were able to watch revisions, questions, and suggestions made by Drought Task Force members in real-time. Drought Task Force members updated all items moving forward as narratives for the final report or proposed recommendations by November 30th after which they engaged with members of the public who provided comments and responses to proposed items and narratives.

Voting on Proposed Recommendations and Narratives

At the December 7th meeting, hosted by Colorado Water Resources and Power Development Authority, in Denver, Drought Task Force members voted on proposed recommendations for the

legislature. Voting was done by roll call with majority vote winning. Members decided they could vote:

- Yes/Yes with comment
- Present
- No/No with comment

In addition, members agreed to the possibility of including a Minority Report when proposals were voted down. This method was used primarily due to the short-term nature of the Task Force, which did not allow for a fuller discussion of the topic inclusive of all interested parties, and the recognition that any proposed recommendations that moved forward with the legislature would be subject to the legislative process. **Therefore, Recommendations passed by the Drought Task Force are a recommendation of the concept itself, and not necessarily the specific language of the proposal and should be read with this in mind.** Proposed recommendations that were not approved are preserved in this report under the section "Recommendations Considered but Not Approved."

Items included in the Narrative are topics that were raised during Drought Task Force meetings and that the members of the Drought Task Force believe are important topics in need of further discussion. **Items included in the narrative were not voted on by the Drought Task Force and therefore, as written, are not endorsed by the Drought Task Force. In addition, some of the information provided in the statements has not been vetted.** The inclusion of these items is for the purpose of preserving topics of Drought Task Force discussion and meant to convey that the Drought Task Force believes these items need further discussion in the future that is inclusive of the various relevant entities. Narrative items are organized in the order in which they were discussed by the Drought Task Force.

Sub-Task Force

Meetings Overview

The Sub-Task Force met a total of six times between September 12th and December 8th, 2023. All meetings were held in-person except for the final meeting, December 8th, which was held on Zoom. Like the Drought Task Force, members of the Sub-Task Force agreed to prioritize meeting in-person as much as possible. All meetings included a virtual component with a Zoom Webinar allowing members of the public to observe virtually or in-person. All meetings were livestreamed as well on YouTube and the Task Force website. In one case the livestream experienced issues and was unable to stream. The backup recording was loaded to the website and YouTube within several hours of the meeting.

Public Notice, Agendas, and Meeting Minutes

All Sub-Task Force meetings were noticed on the Task Force website. Final agendas, developed by individual members of the Sub-Task Force based on discussion at the previous meeting, were posted between three and seven days before meetings. Draft meeting minutes were made available through the website when possible and final meeting minutes were posted after approval by the Sub-Task Force.

Open Meetings Law and Colorado Open Records Act

Prior to the first Sub-Task Force meeting, the facilitators were made aware that the Sub-Task Force was considered subject to OML and CORA. The facilitators worked with the OLLS to provide information to the Sub-Task Force on what this meant for their interactions and the development of any Sub-Task Force recommendations and Final Report. Megan McCall (OLLS) August 10th presentation to the Drought Task Force was made available to Sub-Task Force members not on the main Drought Task Force.

To comply with OML and CORA, as well as encourage public engagement with the Sub-Task Force, all documents shared with or by Sub-Task Force members were posted on the Task Force website on the Resources page. Sub-Task Force members were encouraged to not engage in conversation with one another about Sub-Task Force business outside of meetings. All meetings were made available to the public virtually through a Zoom Webinar and livestream and recordings were posted on the website. Members of the public were invited to attend in-person meetings.

Public Comment

At their first meeting, September 12th, the Sub-Task Force members agreed to hold up to one hour of public comment at the beginning of each meeting following. A total of three members of the public provided comments over the next five meetings. In addition, written public comment was received and shared with Sub-Task Force members through email to the facilitators or the public comment box on the website. These written items were shared via email with Sub-Task Force members. No letters from organizations were written directly to the Sub-Task Force. Any letters written that included the Sub-Task Force were also shared with the larger Drought Task Force and posted to the website under the Resources page, “Additional Resources.” A total of four written public comments were received from members of the public. Individual Sub-Task Force members heard from a variety of constituents, held meetings to receive feedback, or received emails from members of the public throughout the duration of the Task Force. Data on these interactions was not recorded by the facilitators. The Sub-Task Force was mentioned in six news articles.

Sub-Task Force Meeting Topics & Process of Developing Recommendations

At their first meeting on September 12th, hosted by Southwestern Water Conservation District (SWCD) in Durango, Sub-Task Force members set a schedule for their meetings, presented on Tribal Water Rights, and discussed items for discussion at future meetings. At their October 11th meeting, also hosted by SWCD, Sub-Task Force members began in-depth discussions of water and drought issues facing the Southern Ute Indian Tribe and Ute Mountain Ute Tribe. Discussions continued at the October 23rd meeting, hosted by the Ute Mountain Ute Tribe in Towaoc, and the October 30th meeting, hosted by the Southern Ute Indian Tribe in Ignacio. Members refined questions for presentations from representatives from the Colorado Dept. of Natural Resources at this meeting. The November 29th meeting, hosted by SWCD in Durango, involved presentations on various topics and questions specifically requested by the Sub-Task Force from Lauren Ris (Director, CWCB), Stacy Coleman (Tribal Liaison, Dept. of Natural Resources), and Kevin Rein (State Engineer, Division of Water Resources). Additionally, the Sub-Task Force prepared their own recommendations for voting on and reviewed the proposed recommendations and narratives of the larger Drought Task Force, providing comments on the "Short List" shared document hosted on the Task Force website. Members of the public were able to view the proposed recommendations and provide comments if they wished to between December 4-8th – recognizing that this timeline was condensed.

During their final meeting, Sub-Task Force members reviewed and revised their proposed recommendations, set the process for voting, and discussed assignments for developing the final report.

Voting on Proposed Recommendations and Narratives

At their December 8th meeting, held virtually, Sub-Task Force members voted on proposed Recommendations for the legislature. Voting was done by roll call with majority vote winning. Members decided to vote in the same manner as the larger Drought Task Force:

- Yes/Yes with comment
- Present
- No/No with comment

In addition they included the possibility of including a Minority Report if proposals were voted down. This method was used primarily due to the short-term nature of the Sub-Task Force, which did not allow for a fuller discussion of the topic inclusive of all interested parties, and the recognition that any proposed recommendations that moved forward with the legislature would be subject to the legislative process. **Therefore, Recommendations passed by the Sub-Task Force are a recommendation of the concept itself, and not necessarily the specific language of the proposal and should be read with this in mind.** There were no recommendations that were not approved. Two proposed recommendations were moved to the "narrative" category.

Items included in the narrative are topics that were raised during Sub-Task Force meetings and that the members of the Sub-Task Force believe are important topics in need of further discussion. They may not require legislative action. **Items included in the narrative were not voted on by the Sub-Task Force and therefore, as written, and should not be viewed as endorsed by the Sub-Task Force. In addition, some of the information provided in the statements has not been vetted.** The inclusion of these items is only meant to convey that the Sub-Task Force believes these items are important and in need of more conversation going forward.

Recommendations

Introduction

At the December 7th meeting Drought Task Force members voted on proposed Recommendations for the legislature. Voting was done by roll call with majority vote winning and tallies are included with each item. Members decided to vote:

- Yes/Yes with comment
- Present
- No/No with comment

In addition, members agreed to the possibility of including a Minority Report when proposals were voted down. This method was used primarily due to the short-term nature of the Task Force, which did not allow for a fuller discussion of the topic inclusive of all interested parties, and the recognition that any proposed recommendations that moved forward with the legislature would be subject to the legislative process.

Therefore, Recommendations passed by the Drought Task Force are a recommendation of the concept itself, and not necessarily the specific language of the proposal and should be read with this in mind. Proposed recommendations that were not approved are preserved in this report under the section "Recommendations Considered but Not Approved."

1. Continue the Technical Assistance Grants for Colorado Water Projects

VOTE:

Yes/Yes with comment: 17 **Present:** 0 **No/No with comment:** 0

The Drought Task Force voted unanimously to recommend this concept. The specific language of the recommendation may require adjustment.

DROUGHT TASK FORCE RECOMMENDATION:

Many Drought Task Force members felt these grants have provided the additional capacity local entities need to compete for federal grant funds and have proven to be a useful resource for Colorado water users. Currently, the program is funded using one-time federal American Rescue Plan Act dollars and is limited to work on federally funded programs. The Drought Task Force recommends that:

1. The Colorado General Assembly should continue funding this program using state funds at a level recommended by the Colorado Water Conservation Board to be consistent with demand.
2. Funds should be used to expand capacity for all grant needs and not limited to federal grant dollars.
3. An appropriate percentage of these funds should be granted to entities working in the Colorado River Basin of Colorado.

BACKGROUND:

The Federal Technical Assistance Grant Program offered by the Colorado Water Conservation Board provides grants to eligible entities to assist with capacity and resources in pursuit of federal funding opportunities that directly support the Colorado Water Plan objectives. This program is designed to help grantees identify, initiate, and improve projects in their jurisdiction, resulting in highly competitive federal aid applications. The allowable uses of this grant funding are broad in scope, to allow for the wide range of federal opportunities available. Funding can be used for preliminary project planning and design, preliminary permitting, development of estimated project costs, navigation of available federal opportunities, grant writing, and federal grant application submission. The ultimate goal of the program, and a required element of every funded project, is the submission of one or more applications seeking federal funding for further project work.

There are two types of grants available through the Federal Technical Assistance Grant Program:

- Local Capacity Grants: These are direct awards to grantees to secure the resources they need (contractors or otherwise) to develop projects and submit competitive federal grant applications.
- Technical Assistance Grants: These are awards to grantees who want to utilize a contractor hired by the Colorado Water Conservation Board. This contractor can provide a wide variety of water project services, including researching federal grant opportunities, project design, partial engineering, cost estimation, and federal application development/grant writing.

A total of $5.0 million in federal American Rescue Plan Act (ARPA) funding is available for grants. A minimum of 25% matching funds is required. For Local Capacity grants, up to half of this match can be in-kind work provided by the applicant.

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept; funding should be available to Tribal Nations.

2. Provide Increased Funding throughout State Programs for Aging Water-Related Infrastructure

VOTE:

Yes/Yes with comment: 17 **Present:** 0 **No/No with comment:** 0

The Drought Task Force voted unanimously to recommend this concept. However, the specific language of the recommendation requires adjustment. Please see the comments provided by Drought Task Force members.

DROUGHT TASK FORCE RECOMMENDATION:

The Drought Task Force identified increased funding for this area as a high priority. There was recognition that some funding has been increasing (Gaming funds) and there are additional Congressional directed spending grants. The concern is that the need for funding is much greater than appreciated in the current Colorado program budgets. Aging infrastructure is extremely costly and yet can often provide the largest water savings we can realize by maintaining and improving our existing water infrastructure and avoiding losses,

particularly in agricultural supply systems. Repairs to infrastructure can save water and also allow better adaptation during times of drought. Tribal presentations made it clear that infrastructure stability and repair must happen prior to innovation.

If there is truly “once in a generation” federal funding available, then a path for funding more aging infrastructure needs to be identified.

The Drought Task Force recommends that:

1. The Colorado General Assembly should increase funding levels throughout state programs for aging water-related infrastructure, which could include replacing and upgrading diversion structures, headgate and conveyance efficiency improvements.
2. CWCB evaluate funding mechanism for aging infrastructure
3. CWCB should consider cash-match requirements and low to no interest rate loans for aging infrastructure. While multiple benefit projects are admirable, basic infrastructure is the foundation for many rural agriculture and municipal projects and deserves stronger consideration.

BACKGROUND:

Repairs to aging infrastructure are extremely costly due to the sheer numbers of delivery systems and miles of canals and ditches involved in water delivery to agriculture, rural and tribal systems. Colorado has many unique delivery systems that are very old, some dating to the late 1880’s and costly due to the challenging topography inherent in a headwater state. Lining and replacing older ditches would be investments that improve our existing infrastructure and can provide the largest water savings possible by strategically funding improvements to avoid losses in transit and leakage.

Infrastructure improvements need to include many different types of projects including the replacement and upgrades of diversion structures, headgate and conveyance efficiency improvements, and the even the rehabilitation and repair of storage reservoirs throughout Colorado. The resulting water savings means that all agricultural projects can do **more** with **less**. Many areas in Colorado have already experienced significant reductions in their water supply due to the driest hydrology in 1200 years. In these examples, a 30% decrease in precipitation equates to a 30% reduction in farming and a resultant reduction in income. Colorado funding for infrastructure investments and or loan payments have been depleted and local match necessary for grants and loan programs is beyond the ability of many rural entities.

Colorado has competing imperatives when it comes to taking care of our precious water resources. The demand for funding has grown exponentially across many programs including:

- The Colorado Water Plan funding, the (increasing)
- Water Supply Reserve Fund (WSRF) Grants (falling)
- CWCB Revolving loan funds
- Colorado Water Resources and Power Development Authority loans and State revolving base funding

The CWCB prioritizes water plan grant applications that clearly have multiple benefits and that is consistent with the statutory guidance. So projects that are purely ag infrastructure

improvement projects are not prioritized for the available Water Plan Grant funds which means the proponents need to pursue Water Supply Reserve (WSRF) dollars. The Governor's current budget proposal seeks $3 million for WSRF to be spread out over all the basins (approximately $300,000 for each basin, which does not go very far to address the existing needs in municipal and ag sectors). Meanwhile the WPIF (Water Plan Grant fund) is projected to receive $35 million from gaming revenues.

Water Plan Grant funds may be technically available for ag infrastructure projects, but in practice, both staff guidance and history show it does not work that way.

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept; funding should be available to Tribal Nations (and is needed for projects like the Pine River Indian Irrigation Project).

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Mike Camblin: The match funds on these projects can be very difficult for small irrigation districts and ag producers to come up with. Consider match funds dependent on the ability to pay.

Orla Bannan: Funding for aging infrastructure is important, however, no information was provided to support the claims that this would lead to the "largest water savings".

Kelly Romero-Heaney: The CWCB acknowledges that infrastructure funding is important for Colorado's water future. Included in Colorado's Water Plan is an agency action (2.8) to streamline agricultural infrastructure funding - which calls out connecting water users to resources and grant writing training. The agency has existing programs (low-interest loans, WSRF grants, and Water Plan Grants) that can support aging infrastructure. With the Severance Tax distribution changing as a result of SB21-218, the CWCB took action to stabilize WSRF funding; securing $3M annually for the program (which is more than the program received historically).

While the CWCB supports additional funding for infrastructure in concept, it is unclear where additional funding in this recommendation would come from. The background section of this recommendation references a forecasted $35 million in gaming revenues (Prop DD funding) to support the Water Plan Grant Implementation Fund, but that fund has a TABOR cap of $29 million. The CWCB Construction Fund does not have the capacity to support additional financial commitments.

Related to cash match, the loan program provides 100% financing (no match required) for water supply projects. The loan program can also be used as the source of matching funds for grants. The CWCB does not support reducing matching fund requirements for its grant programs. Matching funds from grantees demonstrate a commitment from the grantee, showing a shared investment in the project's success. Matching funds also ensure the financial stability of projects.

Randi Kim: Funding for aging infrastructure should be made available to all water user sectors (agriculture, municipal, Tribal Nations, etc.)

Alex Davis: Support Randi Kim's statement that funding for aging infrastructure should be made available to all water user sectors (agriculture, municipal, Tribal Nations, etc.). Additionally, it is unclear what 'rural' means in terms of infrastructure. I would recommend that 'rural' be defined or dropped and municipal be included.

3. Prioritize Forest Health and Wildfire Ready Watersheds

VOTE:

Yes/Yes with comment: 17 **Present:** 0 **No/No with comment:** 0

The Drought Task Force voted unanimously to recommend this concept. However, the specific language of the recommendation requires adjustment. Please see the comments provided by Drought Task Force members.

DROUGHT TASK FORCE RECOMMENDATION:

1. Add stronger criteria for state funding for Community Wildfire Protection Plans to meet the goals of Critical Community Watershed Wildfire Protection Plans (CWP^2).
    a. Community Wildfire Protection Plans (CWPPs) are authorized and defined in Title I of the Healthy Forests Restoration Act (HFRA) passed by Congress and signed into law by President George Bush on 12-3-2003,

By definition CWPPs tend to center around urbanized areas located within or surrounded by wildland fuels. Many current plans focus on firefighting capability and generally do **not** penetrate deeply into the surrounding wildland fuels. Communities and municipalities tend not to lay claim to the larger watersheds that provide surface water for their residents. Critical Community Watershed Wildfire Protection Plans (CWP^2)s, *build on and broaden* the CWPP concept to *incorporate these critical watersheds* and protect reservoirs, intakes, water transportation and distribution structures and other facilities through the use of site-specific treatments.

BACKGROUND:

Protecting storage from wildfire impacts is important. According to the Colorado Water Plan, "Stream and forest health improvements using nature-based solutions can support both the natural environment and existing water infrastructure and storage by building resiliency for drought, fire, and floods; reducing sedimentation; improving water quality; attenuating high flows; and enhancing groundwater recharge."

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept; funding should be available to Tribal Nations.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Nancy Fishering: Perhaps adding a second recommendation: 2) Promote the Wildfire Ready Watershed (see Kelly reference below)

Randi Kim: Clarify what is suggested for stronger criteria.

Kelly Romero-Heaney: This proposal aligns with CWCB's Wildfire Ready Watershed Action Plans and CWCB has funding to implement these plans. The critical watershed piece is essential for a community wildfire protection plan. Recommend spelling out "(CWP)2 as Critical Community Wildfire Watershed Protection Plan and specifically referencing CWCB's Wildfire Ready Watersheds program and funding. Include reference here: https://www.wildfirereadywatersheds.com/

4. Expansion of Temporary Loan Program to include Storage Rights

VOTE:

Yes/Yes with comment: 14 **Present:** 2 **No/No with comment:** 1

The Drought Task Force voted by majority rule to recommend this concept. However, the specific language of the recommendation may require adjustment. Please see the comments provided by Drought Task Force members.

DROUGHT TASK FORCE RECOMMENDATION:

1. Amend the instream flow temporary loan program statute to allow the owner of a decreed storage water right to loan water to the CWCB to preserve or improve the natural environment to a reasonable degree on stream reaches where there is no decreed instream flow water right.
2. During the administrative proceedings where the CWCB would consider a temporary loan of stored water for instream flow use on a reach without an underlying decreed instream flow, the CWCB must establish the appropriate preserve or improve flow rate thresholds. Colorado Parks and Wildlife, or another experienced entity, would present an analysis of how much water may be used to preserve or improve the natural environment to a reasonable degree. The CWCB would then use this information to approve the appropriate preserve or improve flow rate thresholds.
3. All other notice and review requirements in the Instream Flow Rules would remain in effect. This is consistent with the existing process used for a permanent acquisition on a reach without an underlying decreed instream flow water right.

BACKGROUND:

HB20-1157 expanded the Environmental Instream Flow Program's Temporary Loan Program. In its current form, the statute allows an owner of a decreed water right to loan water to the CWCB for instream flow use in 5 out of 10 years to preserve and improve the natural environment to a reasonable degree on reaches with a decreed instream flow water right, and expedited one-year loans to preserve (but not improve) the environment to a reasonable degree on reaches with a decreed instream flow water right. Allowing loans on stream reaches where there are no decreed instream flow water rights would increase the flexibility and applicability of the program. As an example, this would be helpful on stressed mainstem rivers for which new instream flow appropriations may not be feasible.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS

Steve Wolff: The specific locations where this may be utilized is very important. In Southwestern Colorado this could enable more water to be moved out of state impacting other Colorado water users on the system. If this moves forward, additional sideboards are needed on this proposal to protect the systems within Colorado.

Nancy Fishering: Specific locations is an important component and details are needed to avoid unintended consequences that could 'cause harm'.

Randi Kim: Depending upon demand, this could create unintended temperature issues in the donating reservoir. This would require coordination with Colorado Parks & Wildlife.

Kyle Whitaker: Concern with allowing loans for in-stream purposes without a defined limit established through a water court process and thus impacting maximum utilization of Colorado's compact apportionment and potentially allowing a de facto export of water out-of-state. While a finding by CPW for a flow amount to preserve or improve the natural environment to a reasonable degree would have technical merit, it does not take into account many other considerations raised in the CWCB and water court processes.

Orla Bannan: As currently contemplated, a loan for instream purposes for a reach without a decreed instream flow water right would follow the process that the CWCB has adopted for permanent acquisitions under the Instream Flow Rules. Under this process, CPW, or other experienced entity, currently conducts the required analysis for water acquisitions for permanent loans through a robust and public process that allows for consideration of many factors. It is anticipated that temporary loans would follow a similar process.

Alex Davis: If the loaned water right is not decreed for ISF use, the use of that water right for ISF purpose should not be included in any subsequent CU analysis or be able to increase the consumptive use of the loaned water right. Nor should any shepherding of the loaned water be done in a way that requires water users already on the stream to incur infrastructure costs they would not have otherwise incurred.

5. Expansion of Agricultural Water Protection Water Rights Beyond Divisions 1 and 2

VOTE:

Yes/Yes with comment: 10 **Present:** 4 **No/No with comment:** 3

The Drought Task Force voted by majority rule to recommend this concept. However, the specific language of the recommendation may require adjustment. Please see the comments provided by Drought Task Force members.

DROUGHT TASK FORCE RECOMMENDATION:

1. Agricultural Water Protection Water Rights create opportunities for agricultural water rights holders to make water temporarily available for other uses, while keeping water in agriculture. This provides a potential source of water for instream flows, as well as other uses. This tool is currently limited to Divisions 1 and 2 and could be extended to agricultural water rights holders in other divisions so the tool is available statewide.

BACKGROUND:

This water right allows a water court-approved consumptive use quantification of an agricultural water right, following which the water rights may be made available, temporarily, for other uses. Water may be used by a new use through an administrative process (Substitute Water Supply Plan) approved by the State Engineer.

SUB-TASK FORCE COMMENT:

The Sub-Task Force notes that statewide application can ensure Tribal ability to participate.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Andy Mueller: This is a recommendation to expand a tool from Divisions 1 & 2 despite the fact that the tool has been available for many years and never utilized by anyone. It does

not warrant the necessary expenditure time by the legislature and stakeholders to expand a program that has never been used. The legislature should spend its time on more useful items.

Steve Wolff: A broader discussion as to why this has not been utilized in Water Divisions 1 & 2 is needed to ensure there are no unintended consequences if allowed in other Divisions.

Alex Davis: If the water rights are required to go through the appropriate Change of Water Right process the following concern may be moot. The legislature should be careful not to create "super water rights" outside of the water court process. A super right could be created if a water user is able to use their water in undecreed ways that allow them to control that water when it would otherwise be returned to the stream, that circumvents the system set forth by the Prior Appropriation Doctrine.

Orla Bannan: Under current statutory provisions, Agricultural Water Protection Water Rights do go through a water court process. No change to the water court approved consumptive use quantification of agricultural water rights is contemplated.

6. Measurement Tools

VOTE:

Yes/Yes with comment: 17 **Present:** 0 **No/No with comment:** 0

The Drought Task Force voted unanimously to recommend this concept. However, the specific language of the recommendation may require adjustment. Please see the comments provided by Drought Task Force members.

DROUGHT TASK FORCE RECOMMENDATION:

1. The legislature should continue funding state-wide efforts to improve measurement of streams and expand snowpack measurements using LiDAR for larger scale basin-wide projects. For smaller localized projects, state funding mechanisms for these projects should include a requirement for measurement devices to demonstrate water efficiencies.

BACKGROUND:

The adage, 'you can't manage what you don't measure' certainly applies to Colorado's water resources. The seven states in the Colorado River basin are being asked to negotiate operating guidelines that provide equitable and adequate water supplies throughout the basin. As Colorado develops intrastate tools to better understand their own water usage, this information will be equally as important in negotiating with downstream states. Being able to accurately meter and account for water usage amongst all sectors in the Colorado River basin, will assure our decision making will be based on sound data utilized to develop effective policy.

New technologies like airborne snow measurements using LiDAR and soil moisture monitoring are tools being developed to better understand, model, and calculate the relationship between snowpack accumulation, resulting stream flows, and the effect soil moisture, increased temperatures and aridification have in determining these critical

predictive values. Accurate predictions of snowpack runoff into basin reservoirs will provide regulating entities the information they need in a timely manner to make operational decisions within the Colorado River basin. Measurement accuracy is critical in making sure regulating entities do not over allocate releases at Lee's Ferry and from CRSP reservoirs including Lake Powell.

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept and funding for measurement tools.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Kelly Romero-Heaney: DNR suggests removing the following sentences to avoid confusion about the purpose of this proposal: "Accurate predictions of snowpack runoff into basin reservoirs will provide regulating entities the information they need in a timely manner to make operational decisions within the Colorado River basin. Measurement accuracy is critical in making sure regulating entities do not over allocate releases at Lee's Ferry and from CRSP reservoirs including Lake Powell."

Steve Wolff: Measurement is important and Southwestern is very supportive of this recommendation. The last sentence in the Task Force Recommendation should be deleted. It is not applicable to most of the measurement actions being discussed.

Mike Camblin: The last line of the task force recommendations that states that a requirement to demonstrate water efficiency should be removed.

Andy Mueller: The Colorado River District agrees that developing and supporting new technologies in measurement of all aspects of water supply: snow pack, soil moisture, effects of temperature, wind, dust, and stream flow are critical to solid water supply planning. To that end the Colorado River District funds efforts in most of these areas, but these efforts can use much greater funding and support from the State of Colorado. It is also critical for our state to develop and implement more precise and accurate means of measuring stream flow before it ever engages in systematic water conservation. The last sentence in the task force recommendation is not supported by the Colorado River District. Water conservation and water efficiency are not always the same thing and better water efficiency in outdoor irrigation can lead to greater water consumption due to increased biomass production that often comes with conversion to more efficient irrigation techniques and in certain locations, installation of more efficient irrigation techniques can lead to detrimental changes in delayed return flows.

Nancy Fishering: We note needs for installing and maintaining measuring devices throughout Colorado and note the other comments submitted.

Kyle Whitaker: The last sentence of the Background is unclear and confusing and should be removed. Funding for Measurement Tools should not be directly tied to water efficiency as stated in the last sentence of Recommendations. It is common to need increased measurement and accuracy to understand water availability and water use which may lead to enhanced conservation and management, but is not directly linked

Alex Davis: Agree the last sentence of the Background is unclear and confusing and should be removed. The intent seemed to be to require that projects receiving state funding for measurement devices should demonstrate the project will also result in increased water use efficiency. Measuring devices by themselves do not generally or

necessarily result in increased water use efficiency, thus while incentivizing efficiency can be a positive, limiting funding for measurement projects to only those that also increase efficiency would miss beneficial projects that are focused on increasing the ability to measure without impacting water use efficiency.

7. Invasive Phreatophyte and Species Removal

VOTE:

Yes/Yes with comment: 16 **Present:** 1 **No/No with comment:** 0

The Drought Task Force voted to adopt this recommendation with one member voting "Present." However, the specific language of the recommendation may require adjustment.

DROUGHT TASK FORCE RECOMMENDATION:

1. The legislature should consider funding a state-wide assessment of changes in riparian plant communities, the state of riparian ecosystem function and those impacts to water resources associated with invasive phreatophytes. Ultimately, this would support the development of a state-wide program for controlling these invasive plant species on a larger scale. Further, the legislature should address increasing the Colorado Department of Agriculture's noxious weed removal enforcement program.

   The establishment of a statewide effort should involve cooperation with established local/regional partnerships. Funding streams for removal and restoration should be developed in a manner that avoids unnecessary delays and provides accessible and flexible avenues for non-federal groups, non-profits, and private landowners to fund implementation of projects in an expedient manner.

2. Support for Ongoing Monitoring, Maintenance and Capacity. In addition to a statewide program that supports the removal phase of invasive plant species, we recommend this program support the additional planning, monitoring, maintenance, and capacity needs for these projects to be efficient and effective.

   Restoration is a process that happens over time, almost always extending beyond the timelines of individual projects. To know if efforts are successful, on the right path or meeting objectives, monitoring is needed. When monitoring is conducted and the data are analyzed over time, we can measure how a site has changed and plan for future removal and restoration projects. All removal and restoration projects need to factor in maintenance for follow up treatments of invasive plants, reseeding, and replanting of native species. These projects are never one and done endeavors, and so resources for maintenance (treatment of invasives, revegetation of natives) will ensure public and private initial funding investment are protected.

   Lastly, these projects could not be accomplished without the resources to support the capacity and the people to get them done. We encourage the program to invest in and support the agencies, organizations, and watershed groups capacity to oversee large scale restoration projects.

3. Funding Process and Mechanisms. Funding for removal and restoration should be placed in a grant type program, specifically a block grant model for partners working in

Colorado watershed over multiple years. This block grant model will allow the funding to be allocated from a state or federal governments to recipients or established groups to be used specifically for its intended purpose of removing invasive plant species and restoring native habitat. The use of a block grant program would allow localized and/or regional "bundling" of projects which have similar objectives and characteristics, reducing administrative burdens and costs on both the grantee and grantor. We encourage this program to have a low match requirement for grantees, as this is many times an inhibiting factor to grant programs.

BACKGROUND:

Invasive phreatophytes (deep-rooted, water intensive vegetation like Russian Olive and Tamarisk) and other invasive plant species can fundamentally alter stream channels and systems by preventing floodplain connectivity, changing sediment deposition, altering the nutrient cycles of riparian areas, and impacting water quantity and quality.

Specific Impacts of Phreatophytes such as tamarisk:

- Accessing more water through deep taproots
  - Tamarisk roots reach further and deeper compared to native trees and shrubs.
  - This allows tamarisk to persist and thrive in prolonged drought.
- Using high rates of water
  - Tamarisk use water at a high rate for growth
  - This high water use in combination with the deep-reaching taproots has the effect of drying up the stream or floodplain.
- Crowding out native vegetation
  - Tamarisk reproduces by seed and by cuttings very quickly, which results in dense thickets.
  - Tamarisk thickets block the sun from native species that would otherwise be germinating and growing.
- Increasing fire frequency and severity
  - The dense tamarisk thickets are more fire-prone due to more continuous plant material as fuel.
  - Native trees and shrubs in riparian areas recover more slowly post-fire, so tamarisk re-sprouts and recolonizes in another dense monoculture stand.
  - Tamarisk leaves are more flammable compared to native tree and shrub leaves.
- Decreasing diversity and complexity in riparian systems
  - When tamarisk is the only species making up the vegetation in a river corridor, the habitat becomes one-dimensional and lacks diversity for all organisms.
- Degrading wildlife habitat
  - With a simplified vegetation makeup, the food web associated with that vegetation is also simplified, leading to a decrease in wildlife habitat quality.
- Channelizing banks

- Tamarisk colonizes in tight thickets and armors riverbanks that would normally participate in erosion and deposition events.
- Erosion occurs on the riverbed instead of the banks, which drops the river level and lowers the level of water in the floodplain (also referred to as incising). As a result, the surrounding vegetation changes from wetlands and meadows to dry shrublands.

Tamarisk is listed as an invasive species in at least nine western states and has established itself so readily that it is displacing native plant species.

Best Practices

The management of tamarisk and other invasive plant species requires a long-term commitment of time and resources. With proper management, in combination with restoration measures (e.g. revegetating with native plants), we can return riverside habitats to a more diverse and functional ecosystem.

Local removal efforts can complement stream or riparian improvements but large-scale efforts to remove these species require effective management across jurisdictions.

Removal of Invasive Phreatophytes are Replaced with Native Vegetation: When invasive plant species such as tamarisk and Russian Olive are removed, these areas should be prioritized for restoration of native plants species. This is a critical component to river restoration as well as reestablishing ecosystem functions for improved ecological, social, cultural, and recreational values.

Established Watershed Partnerships with Established Restoration Plans: Many of the rivers and streams in Colorado have Watershed Partnerships (public and private collaboratives) which have prioritized areas for removing invasive plant species and replacing them with native vegetation. Many of these groups are well-established watershed-based partnerships that are already collaborating on phreatophyte management and riparian restoration. These groups have infrastructure in place (e.g. restoration plans, priority areas for restoration, restoration best practices, governance systems, diverse stakeholders relationships), and have developed social capital within public/private partnerships, and currently work with local, state and federal agencies. Most notably these watershed partnerships have existing plans that are paramount for conducting large, reach-scale removal and restoration projects. These plans identify critical elements such as, enabling conditions for invasive plants and other stressors to native plant communities, actions to address stressors, project sites located and prioritized within a defined time frame, and control and revegetation strategies to be implemented. The following partnerships are working within the priority areas previously identified:

- Desert Rivers Collaborative (Colorado and Gunnison)
- Dolores River Restoration Partnership (Dolores)
- White River Partnership (White River)
- Middle Colorado Watershed Council (Colorado River)
- Uncompahgre Watershed Partnership and Uncompahgre Partners (Uncompahgre)
- Purgatoire Watershed Partnership (Purgatoire)
- Arkansas Partners (Arkansas)

- South Platte Partners (South Platte)
- Yampa River Partners (Yampa)

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept; Funding should be available to Tribal Nations.

8. Municipal: Turf Removal

VOTE:

Yes/Yes with comment: 14 **Present:** 3 **No/No with comment:** 0

The Drought Task Force voted to adopt this recommendation, with three members voting "Present." However, the specific language of the recommendation requires adjustment. Please see the comments provided by Drought Task Force members.

DROUGHT TASK FORCE RECOMMENDATION:

1. The legislature should consider increasing funding levels to $5 million per year, and increasing the amount one entity can access. Consider tying state funding to disincentives for new non-functional turf and/or codes disallowing new non-functional turf.

BACKGROUND:

HB-1151 required CWCB to develop a turf replacement program that will provide incentives for replacing nonessential irrigated turf with more water-wise landscaping. HB-1151 allocated $2 million to finance the program.

This funding level is inadequate to sustain an impactful state-wide turf replacement program. In comparison, Utah approved $5 million in funding and Nevada provided funding of $24 million for turf replacement.

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Randi Kim: Funding should not be tied to disincentives for new non-functional turf and/or codes disallowing new non-functional turf. No other incentive programs are constrained by disincentives so it would be a disproportionate burden on municipalities. Further, landscape codes should be handled through local ordinances. Lastly, not all municipal water utilities are aligned with municipal limits so jurisdictional boundaries would create added complexity. Many cities are served by special water districts that have no jurisdictional control over landscape codes.

Kelly Romero-Heaney: The CWCB 24 Projects Bill proposes to replenish the HB22-1151 Turf Replacement account with $2 million to keep this newly created yet popular program going. In addition, CWCB has granted a $1.5 million Water Plan Grant to Resource Central to expand outreach and implementation to the Western Slope, increase residential turf removal and replacement in partnership with 20+ metro water partners, engage new partners across the State, and pilot innovative efforts to address barriers to large-scale turf replacement. Additionally, federal funding through BOR's WaterSMART program remains

available for turf replacement.

Alex Davis: Funding should include the ability to educate people/entities about turf removal and turf replacement options (xeric and other low water use vegetation) to prevent hardscaping.

Recommendations Considered but Not Approved

A. Forest Health and Wildfire: Natural Process Protection

VOTE:

Yes/Yes with comment: 7 **Present:** 2 **No/No with comment:** 8

The Drought Task Force does not adopt this concept as a recommendation based on majority rule vote. Please see the comments provided by Drought Task Force members as to why this recommendation was not adopted.

DROUGHT TASK FORCE RECOMMENDATION:

1. Amend CRS 37-92-502(7) by adding the following language (or something to the effect of):

   Absent a specific request from a landowner or water user, the state engineer, division engineer, and their duly authorized assistants shall presume that naturally occurring obstructions such as beaver dams are not unduly restricting or impeding the flow of water to the water users of the state.

   Or Naturally occurring obstructions, such as beaver dams are not included herein unless a landowner or water user specifically requests that the State Engineer, division engineer, and their duly authorized assistants act because the natural obstruction is causing property damage or preventing a water user from accessing their water when it would otherwise be physically and legally available.

BACKGROUND:

C.R.S. 37-92-502(7) states: The state engineer, division engineer, and their duly authorized assistants have the power and duty to issue orders so that the streams of the state may be kept clear of unnecessary dams or other obstructions which may restrict or impede the flow of water to the water users of the state.

Because natural processes that obstruct the flow of water to some degree recharge groundwater; create areas of greater biodiversity and saturate land, protecting it from wildfires and providing other benefits to people at no cost, such processes which include beavers inhabiting the landscapes should not be removed or interfered with, absent a showing of harm to property, infrastructure or other rights.

MINORITY REPORT:

Alex Davis: The intent behind this proposal was merely to direct the State and Division Engineers to not presume that all natural processes (such as a beaver building a dam) are obstructing water flow to the extent of causing injury to downstream water users. Thus, absent determining that the dam is causing a problem, it would not be removed by the State and Division Engineers. The proposal was not intended to prevent any removal of beavers

or other natural obstructions by anyone else. Natural processes that slow water flow and allow increased saturation of stream banks and meadows increase natural system resiliency: they can reduce the impact of wildfire (burn area and intensity of burn), increase biodiversity, provide for wildlife in dry times, recharge aquifers in wetter times, reduce flooding, and attenuate later season flows. As I understand the opposition to this proposal, it was not in opposition to allowing natural processes that occur to remain in place, the concern was (along with the concerns articulated below) more with creating increased and a potentially more burdensome process for a landowner should they want the State and Division Engineers to take action to remove any obstruction from the river.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Kyle Whitaker: The title of this concept is not descriptive of the suggested recommendations. This item was specific to the State and Division Engineer's authority and process for removing unnecessary dams and obstructions from the stream. Concerns that it is impossible for other water users on a stream system to know when an obstruction to the stream exists on other properties and limiting the authority of the State and Division Engineers to address obstructions in a channel that impairs administration of the priority system.

Jackie Brown: This proposal lacks clear direction on an action which a landowner would engage in to be excluded from beaver dam build up on land impacting their diversion or water rights.

B. Water Banking (WITHDRAWN by Lee Miller)

VOTE:

NO VOTE TAKEN, withdrawn from consideration

This proposed recommendation was put forward by Lee Miller. At the December 7th meeting, Lee Miller asked that it be withdrawn from voting (see comments at end of proposed recommendation). The Drought Task Force concurred and no vote was taken. The language of the proposal put forward by Lee Miller is preserved here. But it should be noted that no vote was taken nor was there a motion to move it to the Narrative section of the report.

DROUGHT TASK FORCE RECOMMENDATION:

1. The existing statute on water banking, Colo. Rev. Stat. § 37-80.5-104.5 should be expanded and revised to authorize a statewide bank that accommodates voluntary, temporary transactions, not only for stored water but for direct flow water rights as well by striking the word "stored" from section (1)(a).

BACKGROUND:

Colorado law currently authorizes the formation of water banks within each water division. Among other limitations, however, such banks are restricted to leases of stored water. No provision is made for a water bank to facilitate leases or exchanges of direct flow water rights. This authorization is needed, however, in order to allow the types of transactions envisioned in the Colorado Water Plan to reduce the pressure to buy-and-dry and help

meet other public needs. Colorado law has allowed short-term loans of water between two agricultural users for over one hundred years, and has more recently provided for interruptible water supply agreements and temporary lease/fallowing arrangements without Water Court approval and upon a finding by the State Engineer that no injury to other water rights will occur.

The essential elements of an enhanced Colorado Water Bank are:

1. Actively facilitates voluntary transactions for temporary alternative uses of existing water rights
2. Use of the bank is risk-free to water right owner
3. Streamlined review process to determine available water and protect other water rights
4. Actively operated by CWCB or delegated public entity within each water division

SUB-TASK FORCE COMMENT:

The Sub-Task Force notes that statewide application can ensure Tribal ability to participate.

COMMENT FROM DROUGHT TASK FORCE MEMBERS:

Lee Miller: While there has been a lot of work done on this concept from 2001-2016, meriting the consideration of the proposal, the conversation has been latent from that time until now. While this task force provided an opportunity to re-engage this conversation, more conversation needs to be had before a proposal of this kind is ready for a legislative recommendation.

C. Recommendation for a Resolution of the General Assembly Related to Implementation of Interstate Conserved Consumptive Use Programs within the State of Colorado

VOTE:

Yes/Yes with comment: 7 **Present:** 1 **No/No with comment:** 9

The Drought Task Force does not adopt a recommendation of this concept based on majority rule vote. Please see the comments provided by Drought Task Force members as to why this recommendation was not adopted.

BACKGROUND:

In order to avoid constraints on Colorado's interstate Colorado River negotiators, this proposal does not recommend or require the adoption of a specific interstate program or strategy. Instead, this proposal recommends that the General Assembly pass a resolution in support of certain standards applicable to implementation within Colorado of any program that would conserve existing consumptive use of the State's Colorado River allocation to send water out of the state (regardless of the specific name of any such program or strategy).

The Colorado River Drought Task Force has discussed several types of programs that could be utilized within the State of Colorado if and when the state implements a program to intentionally reduce its consumptive use of water to address interstate commitments. These programs are distinctly different than many of the programs discussed by the Task Force

to promote drought resiliency within the State of Colorado. It is critical that any program designed and implemented to reduce consumption of Colorado River water for the primary purpose of sending that water across the Colorado state line follow the principles identified by this Task Force (i.e., Put Colorado First and Do No Harm).

The Task Force—and the General Assembly—should not be pre-occupied by a program name. Rather, we should focus on the impacts of any potential conserved consumptive use programs within our state and do our best to structure any such program for the maximum benefit of the State of Colorado while mitigating any potential harm. Whether an interstate-oriented conserved consumptive use program is called a System Conservation Program, Demand Management, Water Banking, Strategic Water Reserve or another name, they all have the common trait of reducing the consumption of existing Colorado River basin water uses in order to send water out of state. Such programs may help to address interstate commitments, but they also may have negative impacts within Colorado.

The General Assembly should not design the details of any program intended to achieve these interstate goals. Rather, the General Assembly can pass a resolution affirming the State of Colorado's intent to protect Colorado's unique values (those that have been identified in the Colorado Water Plan and our state's years-long discussions and investigations of Demand Management and System Conservation) by identifying standards that any such program should meet inside of our state. While the State of Colorado correctly retains the sole right to negotiate interstate agreements, the design and implementation of the Program(s) must be collaboratively developed by the state, operators of transmountain diversion projects (for projects involving transmountain supplies), and the West Slope water conservation districts.

Much of the work on these standards has already been done by the CWCB in its 2018 Demand Management Policy Statement and by the General Assembly itself in drafting SB23-295.

DROUGHT TASK FORCE RECOMMENDATION:

1. Any water conservation program implemented in Colorado with the goal of delivering conserved consumptive use in accordance with the provisions of any interstate agreements or commitments shall comply with the following criteria:
    a. Reductions in consumptive use shall be voluntary, temporary, and compensated.
    b. Programs shall prioritize the avoidance of disproportionate negative economic or environmental impacts to any single subbasin or region within Colorado while protecting the legal rights of water rights holders in the State. To that end, any conserved consumptive use program operated within the State of Colorado shall be designed to produce conserved consumptive use water proportionally from all basins, regions and water user sectors which currently consume the waters of the Colorado River.
    c. Programs shall comply with applicable state law, including, but not limited to, the requirement that the implementation of a Program must not cause material injury to other water rights holders. In order to assure the protection from injury, the program operators shall implement a notice and public input process, and a right of appeal or judicial review that is no less rigorous than

that currently used by the State of Colorado for Substitute Water Supply Plans as set forth in CRS § 37-92-308(4)(c).

d. Programs shall consider and be fully informed by the input and considerations of water rights holders and stakeholders potentially impacted by the operation of Programs within Colorado, and institute a public review process for any such proposed Programs.

e. If a Program is operated within the jurisdictional boundaries of the Colorado River Water Conservation District or the Southwestern Water Conservation District for water diverted and used within the boundaries of those Districts, it shall be designed and implemented collaboratively between the Colorado Water Conservation Board and the applicable Water Conservation District.

f. If a Program is operated to reduce consumptive use of Colorado River water used outside of the natural Colorado River basin, such a program shall be designed and implemented collaboratively between the Colorado Water Conservation Board and the applicable transmountain diversion operator(s).

g. Any program must be implemented consistent with the Colorado Water Plan's Conceptual Framework, including specifically its Principle Four.

h. Any Program(s) primary goal should be to assure compliance with the Colorado River Compact. Any Program shall provide the State Engineer with the appropriate legal authority and direction necessary to fulfill the purposes of the Program in a manner that, without minimizing the primary purpose of the Program, provides benefits to recreation and the environment.

MINORITY REPORT:

Andy Mueller: The Colorado River District would like to thank the General Assembly for convening this Task Force. The District drafted the Proposed Conserved Consumptive Use ("CCU") Resolution in response to the charge presented by SB23-295. Unfortunately, no other proposal considered by the Task Force fully addressed the primary criteria set forth by the General Assembly. The CCU proposal was aimed at helping our state and our water users be prepared should the state find itself in a place where either our state and/or other outside entities, determine that it is advisable to run a large scale, systematic water conservation program for producing conserved consumptive use water within Colorado for the purpose of delivering the same outside of our state ("Interstate Conserved Consumptive Use Program").

It is the Colorado River District's belief and practice that the interests of our communities and our water users are best served by having certainty and thoughtful transparent governance. This proposal was not an endorsement of or a call for implementing an Interstate Conserved Consumptive Use Program, nor was it an effort to limit or weaken our state's negotiating team. Rather this proposal was an attempt to provide support for a set of guidelines that have, for the most part, been previously endorsed by the CWCB in its 2018 Demand Management Policy Statement and by the General Assembly itself in SB23-295.

Unfortunately, the Task Force was unable to provide clear guidance to the members of the General Assembly with respect to how our state should be prepared to move forward should the pressure to participate in an Interstate Conserved Consumptive Use Program increase

in the future. We respectfully disagree that the CCU proposal is premature, and that this conversation should wait until a specific program is implemented. With critical reservoir storage on the Colorado River hovering at or below 35% of capacity, we are only one dry year away from returning to the state of crisis we saw last year at this time. We will continue to work with both the Executive and Legislative Branch of our State government as well as other stakeholders in the river to advocate for cooperation and greater certainty for our water users and the environment.

COMMENTS FROM DROUGHT TASK FORCE MEMBERS:

Aaron Citron: If the State of Colorado decides to participate in a conserved consumptive use program to reduce water users risks on the Colorado River then many of the criteria included here should be strongly considered for inclusion. I particularly support inclusion of provisions related to environmental shepherding and the need to protect communities from disproportionate negative economic or environmental impacts. However, additional work may be necessary to refine the criteria and program guidance to incorporate the wide ranging concerns and values of all potentially affected water users and to ensure that program design and implementation would be consistent with all relevant state and federal laws.

Kyle Whitaker: Implementation of a voluntary, temporary and compensated program to reduce consumptive use in Colorado will be difficult and nuanced to address the situation at hand, while considering the concerns of all. The establishment of “rules” or “guidance”, before the objectives and details of such a program are known, will limit flexibility, effectiveness and the ability for Colorado to best adapt in a thoughtful way to the situation.

Jackie Brown: The industrial users with thermo-electric generation facilities on the west slope impacted by HB19-1261 and SB19-236 request inclusion into a future CCU proposal. With that said, proportionality would be impacted because there are only two rivers (San Miguel and Yampa R.) that would contribute water. Any future CCU proposal should be outlined for consideration of the full program, not general ideas. The idea of having collaboration by local WCD has merit, but also seems cumbersome in process. This should be fleshed out more.

Nancy Fishering: We believe that this item had considerable merit and had language that addressed many concerns heard in agriculture communities. There was not adequate time to develop the collaborative language needed. We would have preferred some clarity going forward but always are concerned to support our State Commissioner in negotiations.

Some public comments note that all groups need ‘skin in the game’ and we believe that it is important to note that our hydrology has reduced access to stream flows and reduced ability to use allocated, decreed water rights which should be considered ‘skin in the game’.

Steve Wolff: Unfortunately the Task Force spent very little time discussing this recommendation. If we had, we may have been able to develop language that we all could have agreed to and moved a recommendation forward. As written, there are aspects that could not be supported by Southwestern.

Orla Bannan: Additional discussion of this recommendation is needed. Potential criteria for a conserved consumptive use program could be further explored and tested by pursuing a pilot program, as suggested in a letter to the Task Force from Trout Unlimited in November. Any potential conserved consumptive program should include consideration of multiple benefits, including benefits to recreation and the environment. Tribes should be included in discussions of potential conserved consumptive use programs.

Narratives

Introduction

Items included in the Narrative are topics that were raised during Drought Task Force meetings and that the members of the Drought Task Force believe are important topics in need of further discussion. **Items included in the narrative were not voted on by the Drought Task Force and therefore, as written, are not endorsed by the Drought Task Force. In addition, some of the information provided in the statements has not been vetted.** The inclusion of these items is for the purpose of preserving topics of Drought Task Force discussion and meant to convey that the Drought Task Force believes these items need further discussion in the future that is inclusive of the various relevant entities. Narrative items are organized in the order in which they were discussed by the Drought Task Force.

i. Create Additional Storage

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION:

Ag water contributes to stream health, stream volume, and the resulting benefits to stream temperatures, flows for fish habitat, flows for hydro, and flows for recreation. In years with low hydrology, added volume from system re-regulating reservoirs allows for improved efficiency and maximizing beneficial use. Small reservoirs may capture early run-off to add water during summer hotter, drier periods of low rainfall. In climate change scenarios some years they would be dry. Needing water to push water is a reality for many ag irrigation systems. In addition, prioritizing in-stream flows over building new reservoirs can marginalize the benefits ag water lends to healthy rivers.

CONCEPTS DISCUSSED:

1. Create new storage in strategic locations, to protect and enhance existing agricultural uses under future uncertainty
2. Create strategic and small storage facilities that meet multiple needs. Small reservoirs could be in the 2,000 to 5,000 A/F scale.

SUB-TASK FORCE COMMENT:

The Sub-Task Force supports the concept of strategic and small storage; funding should be available to Tribal Nations (and is needed for projects like the Ute Farm & Ranch small storage project).

DETAILS IN NEED OF FURTHER DISCUSSION:

Alex Davis supports the concept of strategic storage and of small storage. Prioritizing one need over another or focus on individual sectors creates controversy and can be divisive. Strategic storage, small storage vessels or small and strategic storage can significantly benefit agricultural, municipal and environmental users. Any focus on storage should not be limited to benefit only one user.

Letisha Yazzie: There should not be a minimum capacity for strategic and small storage facilities. It should be rewritten to say, Small reservoirs could be up to 5,000 A/F scale. Ute Mountain Ute Farm and Ranch Enterprise is in the beginning stages of creating a 1,000 acre-feet reservoir at the end of the Towaoc canal that feeds UMU Farm and Ranch Enterprise. Having these small storages in strategic locations is huge with the ongoing drought and decreased water supplies in drought years as seen from 2021-2022.

Lee Miller: This suggestion to "create new storage" is not as specific as the proposal below at No. 4 which calls for statewide planning and funding of storage. For concrete action on this concept, one should look to No. 4.

Aaron Citron: This proposal is framed to suggest a broad conflict between "prioritizing in-stream flows over building new reservoirs." It will be important to balance water user needs for certainty that reservoirs may provide with the environmental impacts of certain reservoir projects. Both represent worthy goals that may need to be evaluated further. However, this sentence is unclear and doesn't accurately represent the more nuanced discussion that should be had in this space.

Orla Bannan: This item will be addressed by the work described in item 4 of the narrative below: Statewide Planning & Funding for Storage Reservoirs. The statement above claiming that instream flows are prioritized over building new reservoirs is unclear and inaccurate.

ii. Allow More Flexible Sharing of Stored Water

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here.

BACKGROUND INFORMATION:

Tools are needed to facilitate flexibility in the use of water rights in storage. Already stored water is water whose absence from the system has already been felt. With the appropriate safeguards to prevent expansion of use or double dipping, water users and the State Engineer's Office should be given the ability to share already stored water with other users, including the environment, more flexibly. (For example, without needing specific decreed beneficial uses.) One of the existing safeguards is that for any given reservoir, there will be a limited number of types of additional beneficial uses that could be applied (due to geography, hydrology and physics).

CONCEPTS DISCUSSED:

Allow the State Engineer to approve sharing of already stored water with other users.

DETAILS IN NEED OF FURTHER DISCUSSION:

Alex Davis: Critical to this concept is the idea of preventing of use or double dipping. Additionally, if the loaned water right is not decreed for the other uses, the use of that water right for the additional purpose should not be included in any subsequent CU analysis or be able to increase the consumptive use of the loaned water right. Nor should any shepherding of the released water be done in a way that requires water users already on the stream to incur infrastructure costs they would not have otherwise incurred.

iii. Storage Rehabilitation and Repair

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here. At the December 7th meeting of the Drought Task Force a motion was made to take a vote on the topic as a recommendation by Nancy Fishering and seconded by Allison Baker. However, that motion was withdrawn and the item is preserved as "narrative."

BACKGROUND INFORMATION:

During the past two years DWR has obtained $2.5 million to complete Comprehensive Dam Safety Evaluations (CDSE) at over 40 dams across Colorado. These efforts, which are undertaken with dam owners, include evaluating spillway capacity and probable failure modes at existing reservoirs using new extreme precipitation and hydrologic methods. While these CDSEs are primarily undertaken to improve the management of risk to the public from dam structures, they can identify storage reservoirs with potential additional capacity due to spillways that were designed using probable maximum flood estimates much higher than produced with the new hydrologic methods. This can result in opportunities for increasing storage by simply raising a spillway crest. For example, at one structure a potential 151 ac-ft (21 percent) increase was identified that only required construction of a 4.5 ft concrete sill in the spillway.

Storage rehabilitation and repair is also needed as seen on Grand Mesa after the past 20-year drought.

CONCEPTS DISCUSSED:

Use the Comprehensive Dam Safety Evaluations to identify existing storage reservoirs with potential additional capacity.

DETAILS IN NEED OF FURTHER DISCUSSION:

Alex Davis: This proposal did not get a lot of discussion and I just wanted to weigh in in support of this concept. Increased storage will be important to creating more flexibility for river administration. So long as the increased storage does not create harm to the stream or to water users, increasing our ability to store water in wetter periods can provide significant benefits. Increasing storage capacity in existing reservoirs can be (but is not always) significantly less costly on every level than building new storage. If the State in conjunction with evaluations they are already doing can also include an initial identification of opportunities for creating additional capacity, this seems like a huge benefit.

iv. Statewide Planning and Funding for Storage Reservoirs

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION:

Colorado is a headwaters state, meaning every river, creek and stream delivers water out of our state. The Colorado River over the past 20+ years is experiencing the driest hydrology recorded in 1,200 years. In addition, ambient daily temperatures within the Colorado River basin are increasing, resulting in regional aridification that impacts snowpack runoff, low soil moisture, decreasing stream flows, and increased evaporation that leads to lower reservoir levels.

Reservoir storage has proven itself as the most effective year around tool at keeping rivers flowing for recreation, sustaining agriculture during the growing season, maintaining adequate stream flows to protect our fisheries and environment, and providing water users a sustainable supply of water during times of drought. It is critical that as a headwaters state, we actively continue to look for watersheds where additional storage can be developed and maintain existing storage infrastructure to fully utilize these facilities. Of course, there are environmental impacts to consider, and we will need to shift the focus from avoidance to mitigation, thereby creating new multi-benefit environments surrounding these projects that provide new and diverse opportunities for wildlife and recreation.

Drier dry periods and more frequent heavy rainfall precipitation events are predicted to be the new normal in our future weather patterns, these new normals are best managed by storage facilities upstream of communities that would provide a water storage mechanism for the back-to-back low snowpack years associated with prolonged drought when water is needed most.

CONCEPTS DISCUSSED:

1. The Colorado Water Plan Grant program should continue to fund Water Storage & Supply projects including development of additional storage, artificial recharge into aquifers, and dredging existing reservoirs to restore the reservoirs' full decreed storage capacity for multi-beneficial projects and projects identified in basin implementation plans to address the water supply and demand gap
2. In addition, the legislature should consider funding a state-wide modeling and planning effort to identify locations for strategic placement of new or expanded reservoirs that would provide an intrastate tool to develop multi-benefits. With the identification of these strategic reservoir locations, CWCB could spearhead proactive coordination amongst potential stakeholders via the basin roundtables to develop these reservoirs and realize these multi-benefits.
3. The CWCB voted to approve the following funding proposal for the 2024 Projects Bill, Drought Resilience Investment:

   Storage Analysis, Opportunities and Alternatives - Both drought and flood have

implications for storage which need to be considered in future planning. This analysis will refine Colorado's understanding of storage potential, work to identify and outline storage options, differentiate surface and groundwater storage opportunities, and provide a practical understanding of what challenges, opportunities, and alternatives to storage that must be considered alongside storage planning. This report will support Action 1.9 of the Colorado Water Plan. This will also serve to refine estimates outlined in the 2019 Analysis and Technical Update to the Colorado Water Plan. Funding may also support understanding new thinking on best practices for linking projects to local, state and federal funding opportunities (and ways creative funding models have built success). - Estimated Project Time: 2024-2027 - Estimated Project Cost: $350,000

The Task Force supports this funding and recommends that the legislature prioritize funding opportunities and alternatives identified as a result of the storage analysis completed.

DETAILS IN NEED OF FURTHER DISCUSSION:

Orla Bannan: The Task Force spent significant time discussing more flexible use of stored water. An analysis of storage potential should include the most effective use of existing storage. The Task Force did not vote on this proposal, or any recommendations included within the narrative.

V. Drought Legislation Supporting Water Use Transition to Reduce Carbon Dioxide Emissions and Develop Clean Energy Resources by 2050

Drought Task Force members engaged in discussion on this topic and voted on it as a proposed recommendation. It was not adopted as a recommendation (Voting results: Yes: 7; Present: 1; No: 9). A motion was later made by Mike Camblin to shift this item to the Narrative section, which was seconded by Jackie Brown. The motion to move to the Narrative section passed (Voting results: Yes: 15; Present: 2; No: 1).

Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION & CONCEPTS DISCUSSED:

A. **Context:** In 2019, the Colorado General Assembly passed carbon dioxide emissions reduction legislation. §40-2-125.5, C.R.S. (SB 19-236). That legislation mandated an 80% reduction to carbon dioxide emissions by the electric utility sector by 2030. §40-2-125.5(3)(a)(I). Similarly, the legislation requires generation using 100% clean energy resources by 2050. §40-2-125.5(3)(a)(II). ("Energy Transition Legislation").

B. **Purpose:** This proposed legislation seeks to ensure that (1) electric utilities and coal mine operators[1] that supplied fuel to those utilities that experience reduced water demand due to the Energy Transition Legislation, have mechanisms to maintain their portfolio of water rights through the energy transition planning period (2050) so that those water rights may be available to support development of clean energy generation; and (2) the portfolio of water rights located on the Yampa River can be used to relieve shortage for water users and the environment.

1 Colowyo, New Horizon coal mines - see water rights table in Appendix

C. **Temporary:** Note, the timeline of 2050 supports an express objective of the State of Colorado, is shorter than the municipal planning period, and the proposed consideration for the transition would be temporary, sunsetting in 2050.

D. **Specific Modifications:**

1. **HCU Calculation.** 37-92-305(3)(c) states that the judge shall not reduce HCU in a change of water rights case due to a number of circumstances, such as inclusion in a conservation program, land fallowing, or water banking program. Proposed legislation would include the following addition circumstance at §37-92-305(3)(c): In determining the amount of historical consumptive use for a water right in division 1, 2, 4, or 6, the water judge shall not consider any decrease in use resulting from the following. . . .

   305(3)(c) (III), "the non-use or reduced use of water under a water right by an electric utility, or coal mine operator that supplied coal to said electric utility[1], where (i) said non-use or reduction occurred between 2019 and 2050, and (ii) said water right was owned by the electric utility or coal mine operator as of January 1, 2019. Said exceptions are intended to support the continued existence of water rights that may be necessary for the development of future clean energy generation projects and shall apply to changes of water rights that occur during or following the identified period of 2019-2050.

2. **Exception to Abandonment Period.** 37-92-103(2) provides the definition of abandonment of a water right: "Abandonment of a water right" means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. Any period of nonuse of any portion of a water right shall be tolled, and no intent to discontinue permanent use shall be found for purpose of determining abandonment of a water right for the duration that:

   103(2)(b) An electric utility, or coal mine operator that supplied coal to said electric utility1, experiences non-use or reduced use of a water right where: (i) said non-use or reduced use occurred between January 1, 2019 and the last day of 2050, and (ii) said water right may be needed to support development of future clean energy generation projects.

3. **Exception to Abandonment of a conditional water right 37-92-103(1)**. "Abandonment of a conditional water right" means the termination of a conditional water right as a result of the failure to develop with reasonable diligence the proposed appropriation upon which such water right is to be based.

   103(1)(a) "Except that, to support the State's clean energy generation transition initiatives, failure of an electric utility to develop a conditional water right shall not result in abandonment of that conditional water right between January 1, 2019 and the last day of 2050, provided that said electric utility:

   a. *had an ownership interest in the subject water rights as of January 1, 2019;*

   b. *has previously obtained a water court decree(s) finding diligence in the development of such water right; and*

c. *continues to file applications for reasonable diligence in accordance with sections 37-92-301(4)(a)(I) and 37-92-302(1)(a) that identify the efforts made to complete the appropriation in light of the State's clean energy transition, including investigation of the technical or commercial viability of suitable technologies, whether conducted by the conditional water right owner or others in the electric utility industry or supporting mining industry. Evidence of those efforts shall be considered as reasonable diligence in such proceedings.*

4. **Yampa River Multi-Benefit Flow Enhancement Pilot Program (Suggest this belongs in new paragraph (V) to § 37-83-105(2)(a)(IV)(A), C.R.S.)**

   Beginning January 1, 2030 through December 31, 2040, with one renewable 10-year period through 2050, a pilot program is proposed that utility water outlined above in the Yampa River and its tributaries be made available for the both the Upper Colorado River Endangered Fish Recovery Program (UCEFRP) critical reach habitat of the Yampa River and other beneficial uses of water below the point of diversions at Hayden and Craig Station. The designated critical habitat is currently defined from the Moffat County Road 394 bridge over the Yampa River to the confluence of the Green River in Dinosaur National Monument. The pilot program would commence with a first stakeholder user group meeting by December 31, 2025, and will set a timeline for the terms and conditions. Future stakeholding to create the terms and conditions will determine the appropriate amounts and timing of flows during the low flow season of the Yampa River, typically August – October. After the program begins in 2030, the stakeholder group would reconvene annually to review the success of the pilot and plan for the next season. The purpose of this pilot is to align with pertinent Yampa White Green Basin Roundtable's Basin Implementation Plan goals while supporting the goals of the UCEFRP, a program that supports the recovery of endangered fish in the Upper Colorado River Basin while water development proceeds in accordance with federal and state laws and interstate compacts.

   The pilot program would closely follow the Instream Loan Program in C.R.S. § 37-83-105 and require the following elements:

   - Allow for HCU associated with decreed absolute utility water rights (attached tables) to be utilized below the point of diversion to: (1) relieve shortages of existing agricultural water rights decreed on or before December 1, 2023 and; (2) improve the natural environment to a reasonable degree for a stream reach, including the UCEFRP designated critical habitat, even when the Colorado Water Conservation Board does not hold a decreed instream flow water right.
   - The terms and conditions of the pilot program will be set through a stakeholder process and participation of the division 6 engineer. The final terms and conditions will go before the Colorado Water Conservation Board for approval by December 31, 2029.
   - Renewable loans from electric utilities and supporting industries of absolute water rights, approved to preserve or improve the natural environment to a

reasonable degree are limited to a period of use of one hundred twenty days per year.

- Renewable loans from electric utilities and supporting industries of absolute water rights may be used every year in the initial pilot program period. A single approval of the state engineer is required prior to the approval of the terms and conditions by the CWCB.
- The initial pilot program period begins in 2030, after approval by the state engineer and the CWCB. An applicant may reapply for and the state engineer may approve a renewable loan for the pilot program for one additional ten-year period. The last potential date of authorization for the extended pilot period would be December 31, 2050.
- Renewable loans from electric utilities of absolute water rights may be used to preserve the natural environment to a reasonable degree even if there is not a decreed instream flow water right held by the board.
- Renewable loans from electric utilities of absolute water rights may be used to improve the natural environment to a reasonable degree for a stream reach even when the board does not hold a decreed instream flow water right.
- There is a determination that a temporary instream flow loan is in the normal course of business and is not subject to Public Utility Commission approval.
- The use of water rights for renewable loans during the transition period is permissive and will not limit the uses otherwise available to electric utilities or supporting industries during or after the transition period. Any determination of HCU for purposes of this pilot program shall not be binding in any future water court action.

Note: existing statute allows for re-use at end of instream flow reach: "water rights loaned pursuant to this section are not precluded from concurrent or subsequent inclusion in a water conservation, demand management, compact compliance, or water banking plan or program, as is or may be defined or described in statute." Section 105(2)(a)(III.5)

Savings Clause: Legislative drafter will include appropriate language to the effect of: if any part of the Bill is deemed illegal, remaining parts shall survive.

Comment on Industrial Water Users Proposed Tool (Orla Bannan) 11/30/23

A temporary instream flow lease of a utility's water rights shall be considered a transaction in the normal course of business, for purposes of section 40-5-105(1)(a). In the year that the utility executes a temporary instream flow loan and annually thereafter for the duration of the loan, the electric utility shall file with the Public Utilities Commission a report and information on its proposed renewable loan of absolute water rights, including a copy of the lease, information identifying the water rights being loaned, the total amount of water involved, and the payments received.

DETAILS IN NEED OF FURTHER DISCUSSION:

Mike Camblin: This tool needs more time to fine tune, it has a lot of moving parts that need to be looked at. I have concern with conditional water rights attached to this, I am also concerned that if agriculture water rights are included that it will complicate matters with other agriculture producers that cannot put their water into a similar program. I also think if a program like this is implicated they should lose the ability of a call. All industries, municipalities, ag users, environmental, recreation, and fish recovery programs need to be at the table on this one.

NOTE FROM JACKIE: NO AG RIGHTS WERE INCLUDED

Aaron Citron: The Nature Conservancy supports this proposal, but agrees that additional clarity could strengthen it and provide more certainty for water users on the Yampa River. A program to support industrial energy transition in the Yampa must include provisions to provide for agriculture and communities to also have access to the water included in the pilot flow enhancement program. The blanket exception for abandonment of conditional water rights should also be reconsidered.

Kelly Romero-Heaney: DNR supports this proposal as it aims to maintain future clean energy development options while also supporting environmental needs in the Yampa River. However that support is conditional with the understanding that the scope and details will be negotiated through the legislative process. To strengthen the proposal and address initial concerns, DNR suggests the following:

1. Remove the exception for abandonment of conditional water rights;
2. Consider removing language regarding HCU analysis or develop appropriate sideboards to narrow how this exception can be used;
3. The CWCB Instream Flow program is the most appropriate and durable mechanism for restoring environmental flows in the Yampa River, including to the Upper Colorado River Endangered Fish Recovery Program (UCREFRP) critical reach. Amend language to clarify that this pilot program would allow for a water loan to the CWCB Instream Flow Program without a decreed ISF reach and that such loan may also benefit the UCREFRP provided that it complies with the requirements and criteria of the UCREFRP. Note that the UCREFRP is governed by various agreements and federal laws that cannot be amended by state statute. Additional discussion on the other elements of the pilot program are warranted.

Andy Mueller: The Colorado River District is generally supportive of this concept for the reasons provided in the Background section above. That being said, the District would like to see this proposal expressly limited to water rights related to “thermo-electric power production” as the current language seems broader. With respect to the Yampa River Multi-Benefit Flow Enhancement Pilot Program, the River District would like to see this water used for beneficial uses (i.e. agricultural water rights and instream flow) only within the State of Colorado. There needs to be a much more in depth discussion related to use of this or any other conserved water in Colorado is used for interstate purposes. Additionally, HCU determination needs to be subject to the right of an aggrieved water right holder to appeal the determination into water court in order to assure water rights owners are not injured as a result of a change in use. Finally, but perhaps most importantly, there needs to be a robust stakeholder discussion regarding the potential

impacts of this statutory change to the local community. The River District can see both potential positive and negative outcomes arising out of this change and it is important for the local community to be involved in the shaping of this unique program.

Orla Bannan: Supportive of discussing this concept further and how this water can be used to benefit streams during the energy transition. The inclusion of conditional water rights raises some concerns that will need to be discussed in greater detail.

Kyle Whitaker: The protection of absolute water rights used at the Coal-fired Power Plants from diminishment and abandonment is a reasonable consideration given the regulatory circumstances. The extension of such protections to conditional rights associated with the Power Plants could have significant implications to other appropriations on the stream system. The conditional rights already have a water court diligence process that allows for the continuation of these rights if sufficient evidence of can and will is provided. Similarly, extension of these protections to all absolute and conditional water rights controlled by coal mines that provide a portion of the coal to the Power Plants can have significant implications to other appropriations on the stream that would not enjoy the same protections. Significant thought and discussion is needed to find a balance between committing the historic consumptive use of a water right to a non-consumptive use that results in such historically consumed water making it to the state line, with the risk that this could be used as a de facto export of water.

Alex Davis: Similarly - while supportive of a limited time period during which absolute water rights decreed for use by electrical utilities at coal-fired power plants could be protected from abandonment, we are concerned about extending that protection to conditional water rights and would recommend any such protection only apply to absolute water rights. If the legislature considers this idea, we would ask the legislature to be cognizant of whether any considered protections would create a 'super right' and avoid doing so by not allowing the use of the utility water right for interim other purpose to be included in any subsequent CU analysis or to increase the consumptive use of the utility water right. Nor should any shepherding of the loaned water be done in a way that requires water usrs already on the stream to incur infrastructure costs they would not have otherwise incurred. Further, the protection should be limited to only those rights associated with the power plant operations. Supporting industries' (e.g. coal mines) water rights should not be included in the protection. The idea of extending such protection either to a specific 'supporting' industry or to all potentially 'supporting industries' has many problems.

vi. Stream and Riparian Area Management: Augmentation Plans

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION:

Colorado law was recently clarified at Colorado Revised Statutes 37-92-102 to reflect that the CWCB may obtain a water court approval for an augmentation plan intended to benefit a

decreed ISF water right.

CONCEPTS DISCUSSED:

1. Clarify that the CWCB may, like any other water user, obtain temporary approval of such a plan using the Substitute Water Supply Plans (SWSP) process set forth at 37-92-308(5).

DETAILS IN NEED OF FURTHER DISCUSSION:

Orla Bannan: In the future, it would be useful to discuss administrative approvals of augmentation plans to benefit decreed instream flow water rights. The most appropriate timing for such discussions would likely be following experience with use of the existing water court approval process at Colorado Revised Statutes 37-92-102.

Alex Davis: This clarification makes sense.

vii. Shepherding with Environmental Co-Benefits

Drought Task Force members engaged in discussion on this topic. While this item was originally intended for a vote as a proposed recommendation, Aaron Citron motioned to move this item to the Narrative section. The motion was seconded by Steve Wolff. A voice vote was taken with 17 ayes, 0 - Present, 0 - nays. No further action was taken.

Statements in the narrative have not been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION:

Healthy rivers are necessary to a healthy water supply. When flows are too low, temperatures go up, water quality declines, algae blooms foul intakes, fish suffer, and transit losses increase. Coloradans value the natural environment and bustling recreational economy it supports. To ensure our water users and rivers themselves are resilient in the face of drought, the Task Force should consider opportunities to improve natural systems alongside other recommendations being considered.

If the Upper Colorado River Commission makes a finding that additional water is needed to help avoid curtailment in the Upper Colorado River Basin and Colorado decides to participate in voluntary programs designed to help satisfy this finding, Colorado and its water users could leverage such efforts to also mitigate risks to their healthy streams and water supplies by concurrently working to address instream flow shortfalls and meet endangered fish recovery program flow targets. The State Engineer should be directed to adopt guidance that would guide administration of the storage, timing and shepherding of water releases and deliveries to help avoid curtailment of uses under the Colorado River Compact to also provide demonstrable stream health benefits without compromising the primary purpose of water conservation and drought resiliency for which the water is being provided. Instream flow and endangered fish recovery program targets would inform the viable reaches, quantified flow needs, and preferred hydrograph metrics to serve as the basis of the water administration guidance to be developed.

CONCEPTS DISCUSSED:

1. Allow the State Engineer to consider stream health, environmental and recreational benefits in the administration of water rights if the UCRC makes a finding that additional water is needed to avoid curtailment and Colorado decides to participate in a program for such purposes, without compromising the primary purpose for which the water is being administered.
2. Direct the State Engineer to develop and adopt guidance to avoid injury to water users, ensure that the secondary environmental benefits are achieved in a way that doesn't compromise the primary drought mitigation purposes, and identify the appropriate circumstances for such environmental shepherding to be implemented.
3. Direct the State Engineer to collaborate with the CWCB and CPW to evaluate, develop, and otherwise provide flow needs, metrics, and preferred hydrograph information that may be necessary to support decision making intended to meet stream flow needs in the shepherding of water for drought mitigation purposes.

DETAILS IN NEED OF FURTHER DISCUSSION:

Aaron Citron: The Task Force discussed opportunities to provide secondary benefits to the natural environment through the timing and administration of water rights that might in the future be associated with drought resilience or conserved consumptive use programs. Any authority or direction to shepherd water to realize secondary environmental benefits could only be exercised in ways that do not undermine the primary purpose of such a program – namely, to mitigate for drought or otherwise protect Colorado water users under a state-approved conserved consumptive use program. While there seemed to be a degree of support for the concept in principle, further discussion is needed to clarify how and when such a program might be implemented consistent with intra and interstate drought objectives and principles and to ensure unintended consequences to water users are avoided. Specific issues raised include:

- The extent to which the State Engineer has existing authorities to allow for flexibility in shepherding and water rights administration decisions.
- Whether clarifications might be necessary to ensure that environmentally beneficial shepherding decisions wouldn't be made in a way that disproportionately impacts water users in any basin, sub-basin, or tributary.
- Questions were raised about how or if this recommendation could be implemented in a vacuum rather than as part of a full program designed to manage demands and avoid future curtailment under the Colorado River Compact
- Clarifications to ensure that shepherding decisions would be made consistent with the Demand Management Storage Agreement or other interstate and federal requirements.
- Clarification was needed on whether this recommendation was intended to apply statewide or only within the Colorado River Basin.
- Additional information may be needed to more clearly identify the types of stream reaches and flow targets that a program such as this could be designed to benefit. To that end, more work should be done to clarify how Colorado Parks and Wildlife, the Colorado Water Conservation Board Instream Flow Program, the Endangered Fish

Recovery Programs, and Tribal Nations might be engaged to more clearly identify and quantify non-consumptive targets.

Proponents of this recommendation look forward to expanding this dialogue to address some of these unanswered questions in ways that do no harm to Colorado water users while benefiting rivers, wildlife, and recreational opportunities.

Steve Wolff: Seeking environmental benefits when water MUST be shepherded out of state (i.e. because of a UCRC finding or a judicial order) is a benefit to Colorado and is supported by Southwestern. However, no water should ever be shepherded out of state in any type of unnecessary, undefined or voluntary conservation program.

Kelly Romero-Heaney: DNR's position is that if this concept were to move forward, it should be limited to application to a temporary, voluntary, and compensated conservation program established by the 2019 Demand Management Storage Agreement, if such a program is established prior to 2025. DNR would suggest the following language be deleted to clarify this point: "...if the UCRC makes a finding that additional water is needed to avoid curtailment and Colorado decides to participate in a program for such purposes..." DNR further suggests adding the following language to the beginning of the proposal: "If the Upper Colorado River Commission establishes a Demand Management program pursuant to the 2019 Demand Management Storage Agreement between now and 2025, the following shall apply..."

viii. Monitor Long-Term Outlook for 10-Year Total Flow at Lee Ferry

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION:

The Colorado River Compact (Article III(d)) specifies that "The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years..." The Colorado River Compact say (Article IV) specifies that:

a. "Curtailment" may be necessary, if the flow at Lee Ferry is depleted below Article III
b. UCRC sets "quantity" and "time" of curtailment for each state
c. The state (Colorado) determines how to meet compact compliance obligations

The 10-year aggregate flows at Lee Ferry have not fallen below 75,000,000 acre-feet for the years 2004-2022. The current projection by the U.S. Bureau of Reclamation for 2023 and 2024 is that the 10-year aggregate flows at Lee Ferry will not fall below 75,000,000 acre-feet.

The U.S. Bureau of Reclamation projects deficits at Lee Ferry under various scenarios ranging from about 3.5 maf at the 90th percentile, 2 maf at the 50th percentile, and 500 kaf at the 10th percentile.

As stated by U.S. Bureau of Reclamation:

All system projections are subject to multiple sources of uncertainty. One source is the model, which is a simplified representation of a complex system. Another component of uncertainty is the need to estimate physical processes such as reservoir evaporation and transpiration from plants. The most impactful source of uncertainty is the future itself- models rely on assumptions about how hydrology, water demand, and policy/ operations will unfold. Reclamation works with stakeholders and scientists to develop the best modeling practices and most appropriate assumptions in light of the purpose of each model. It is important to understand the purpose, approach, and assumptions associated with each set of projections and their inherent uncertainty to properly interpret the information they provide.

Projections are most sensitive to assumptions about future hydrology, and future flows are highly uncertain. Assumptions about future hydrology based on different datasets can produce very different pictures of risk. For example, risks of reaching low reservoir elevations calculated when assuming the possibility of experiencing flows from the full observed natural flow record spanning 1906 to 2019 are much lower than if we consider only sequences from the observed natural flow record spanning 1988 to 2019 because this portion of the record is significantly drier. There are many other sources of hydrologic data, e.g., paleo records and climate projections, that provide yet different views of risk.

The further out projections look, the more uncertainty exists. This is apparent when comparing the different ranges of possible conditions in 2-Year and 5-Year Probabilistic projections. As time horizons extend and uncertainty increases, projections of statistics-based measures such as risks of certain system conditions become less reliable as representations of the true probabilities that specific events may occur. When it is impossible to confidently state probabilities or identify the best hydrology, demand, and policy assumptions, this context is called "deep uncertainty," and it requires special planning techniques. Reclamation has previously used, and is continuing to research, Decision Making under Deep Uncertainty (DMDU) methods. Refer to the Colorado River Basin Water Supply and Demand Study - Technical Report G and Colorado River Basin Research-to-Operations Program for more information.

Phase IV of the Colorado River Risk Study commissioned by the Colorado River District, July 18, 2023 Update (Hydros Consulting) projected that the 10-year aggregate flows at Lee Ferry may fall below 75,000,000 acre-feet under diminishing natural flow conditions at Lee Ferry (11 and 9 million acre-feet) assuming both current (2020) and projected future (2050) demand projections for Upper Basins.

Please see the Colorado River Risk Study, Phase IV report on the Task Force Resources web page (https://www.crdroughttaskforce.com/resources).

The Risk Study concluded that hydrology is still the primary indicator of system "health". If natural flows decline to 11 million acre-feet or worse, additional cuts in use will be necessary.

CONCEPTS DISCUSSED:

Due to uncertainties in system projections as discussed above, the legislature should monitor ongoing research and modeling and resulting long-term projections for 10-year total flow at Lee Ferry to support sound policy decisions.

DETAILS IN NEED OF FURTHER DISCUSSION:

Kelly Romero-Heaney: It is important to understand that the flow at Lee's Ferry does not determine whether the Upper Division States have violated obligations pursuant to the 1922 Colorado River Compact. Rather, an inquiry is necessary into what has caused the flows of the River to be depleted. The Colorado River Compact provides for a non-depletion obligation - not a delivery obligation. The Upper Division States are in full compliance with the Colorado River Compact. The legal and factual assumptions underlying this narrative are inconsistent with the state's positions.

ix. Regarding Systemic Water Conservation and Lower Basin Overuse

Drought Task Force members engaged in discussion on this topic. This item was originally intended for a vote as a proposed recommendation, motioned by Andy Mueller and seconded by Nancy Fishering. Andy Mueller then motioned to withdraw his original motion, moving it to the Narrative section, which Nancy Fishering seconded. A voice vote was taken to remove the previous motion with 17 - ayes, 0 - present, 0 - nays. A second voice vote was taken to move this item to the Narrative section with 17 ayes, 0 - Present, 0 - nays. No further action was taken.

Statements in the narrative have not been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here along with comments from Drought Task Force members.

BACKGROUND INFORMATION:

The Task Force desires to support one of Commissioner Mitchell's "irrefutable truths." Systematic water conservation programs and reductions in conserved consumptive use are necessary currently in the Colorado River basin due to the failure of the Lower Basin to reduce its consumptive use during times of diminished hydrological supply.

The Lower Basin states have historically overused the Colorado River, and during the 23-year megadrought, this overuse led to the draining of the major system reservoirs and pressure on all water users to reduce their use. Therefore, the Lower Basin must commit to permanent reductions in consumptive use which will result in permanently bringing its collective annual water consumption, including properly accounted-for system losses, to or below the equitable allotment provided to the Lower Basin in the 1922 Compact. The Lower Basin's commitment should be secured before our state implements further systematic water conservation programs designed to reduce our consumptive use of water to send across the state line for the benefit of the interstate river basin, whether called SCPP, Demand Management, or something else.

These Lower Basin reductions in use should include proper accounting of evaporation and transit losses within the Lower Basin (i.e., "system loss").

CONCEPTS DISCUSSED:

1. The Task Force:

   Discussed that overuse by the Lower Basin states within the Colorado River Basin between 2000 and 2022 was a significant contributing factor to the extremely low levels of storage in the Colorado River Basin.

These extremely low levels of storage triggered a significant crisis and emergency actions within the Basin and resulted in calls for the reduction of consumptive use in the Upper Basin, including within the State of Colorado.

The Task Force calls upon the Lower Basin states of California, Nevada, and Arizona to permanently bring their collective annual water consumption from the mainstem of the Colorado River equal to or below the allotment set forth in Article III (a) of the Colorado River Compact of 1922.

The Task Force further discussed the concept that principles of accuracy and equity require that the calculation of annual water consumption should include all depletions to the Colorado River system caused by Lower Basin including evaporative and transit losses associated with the storage and delivery of water within the Lower Basin ("System Losses").

DETAILS IN NEED OF FURTHER DISCUSSION:

Andy Mueller: The last 23 years demonstrated that both the Upper and Lower Basin need to adjust their water uses to live within the present hydrology. The present 2007 Interim Operating Guidelines, even with the adjustments made through efforts like the DCP has not resulted in reductions in water use in the Lower Basin sufficient to avoid putting the system at risk. Moving forward, it is critical that the operating guidelines and the water use in the Lower Basin need to be flexible enough to adjust to current hydrology. Failure to do this will continue to keep the system in a state of crisis, which is no way to manage a resource that is so important to America's food production and 40 million people.

Kelly Romero-Heaney: In discussing the originally proposed resolution, DNR noted that while it supports the fact that Lower Basin overuse must be addressed, a legislative proposal or resolution should not tie the hands of the State of Colorado or limit its ability to conserve water if deemed advisable and appropriate. Commissioner Becky Mitchell has outlined negotiating priorities for the post-2026 operations of Lake Powell and Lake Mead, and addressing Lower Basin overuse is a key component. Additional information on Commissioner Mitchell's negotiating priorities can be found at the Commissioner's Corner website.

Alex Davis: Clearly the Lower Basin overuse must be addressed. Colorado should be careful about agreeing to even in the abstract calls for the reduction of consumptive use in the Upper Basin or within the State of Colorado. Colorado is within its allocation, further the physical reality of the location of storage means that Colorado use is limited as a result of hydrology. The Upper Basin and Colorado have not contributed to the Lower Basin's overuse.

X. Municipal: Advanced Metering Infrastructure (AMI)

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force.

BACKGROUND INFORMATION:

Advanced Metering Infrastructure (AMI) provides near to real time data of water usage

that can be made available to customers through a portal. AMI customer portal educates customers on water use and provides an avenue to promote water conservation. AMI can also be used to identify potential sources of water loss in the distribution system.

CONCEPTS DISCUSSED:

The legislature should consider incentivizing large municipal water providers to develop an AMI implementation plan to install AMI within the next 5 to 10 years. This should be supported by grant funding through the Colorado Water Plan, Conservation & Land Use Planning program.

xi. Municipal: Direct Potable Reuse - Facilitate, Fund and Support

Drought Task Force members engaged in discussion on this topic. However, no legislative recommendation was voted on, nor have statements in the narrative been vetted. Its inclusion here does not equal endorsement by the Drought Task Force. The concepts discussed are preserved here.

BACKGROUND INFORMATION:

Aurora and other cities are already pursuing implementation of Direct Potable Reuse ("DPR") as one of the strategies to address projected water supply gaps. The Colorado Dept of Public Health & Environment has recently adopted rules guiding development and implementation of DPR.

CONCEPTS DISCUSSED:

The legislature should consider how it can incentivize and support addition of DPR systems to municipalities.

DETAILS IN NEED OF FURTHER DISCUSSION:

Alex Davis: Aurora would like the statement above to say that "Aurora and other cities are already **investigating** (not pursuing) implementation of Direct Potable Reuse ("DPR")" as a more accurate statement of where Aurora is in the DPR process.

SUB-TASK FORCE ON TRIBAL MATTERS REPORT

Background on Tribal Water Rights

The Ute People were the original inhabitants of what is now the State of Colorado. The Utes also occupied Utah, Wyoming, Nevada, Northern New Mexico and Northern Arizona. The Utes lived off the land establishing a unique relationship with the ecosystem. The Utes traveled throughout the vast homeland by breaking up their bands into smaller family units that were more mobile. We would alternate hunting and food gathering sites, so the environment would have time to replenish. We only took what was required; did not over harvest game or plants; and were taught to respect the water. We use water in our prayers and ceremonies. Water is critical to our way of life, tradition, and future. We believe in taking care of the water because the water takes care of us.

The Southern Ute Indian Tribe and Ute Mountain Ute Tribe are sovereign nations. Tribal sovereignty refers to the right of American Indians and Alaskan Natives to govern themselves. The U.S. Constitution recognizes Indian Tribes as distinct governments and they have, with some exceptions, similar powers as federal and state governments to regulate internal affairs and have jurisdiction over their lands and their tribal members. The Southern Ute Indian Tribe and Ute Mountain Ute Tribe signed the Treaty of 1868 with the U.S. government.

The Southern Ute Indian Tribe's reservation is located in southwest Colorado. The reservation spans 75 miles in length and is 15 miles wide. Due to the allotment era, the reservation is "checkerboarded," meaning that approximately half of the reservation is held by private landowners and the other half is held in trust by the United States for the Southern Ute Indian Tribe. Tribal headquarters are located in Ignacio, CO.

Ute Mountain Ute Tribe's reservation of approximately 600,000 acres is located in southwestern Colorado, northern New Mexico, and Southeast Utah. Towaoc, Colorado is the main tribal population center and tribal headquarters. The Tribe also owns land outside the Reservations, referred to as Tribal Ranches of Tribal fee lands in both Colorado and Utah.

Tribes hold "Winans Rights" also known as aboriginal rights. In the Winans case, treaty fishing rights were at stake. The U.S. Supreme Court recognized that Tribes who entered into treaties with the United States had reserved the rights that they already had. Justice McKenna stated that a Treaty between the United States and the Indians is not a grant of rights to the Indians, but a grant of rights from them. These apply to many treaty rights, including water. Aboriginal rights have a priority date of "time immemorial."

Tribes also hold "Winters rights." The Federal Indian Reserved Rights doctrine is also known as the Winters doctrine, named for the U.S. Supreme Court case that it is based on. When reservations were set aside for Indian people, sufficient water was also set aside to accomplish the purposes of that reservation. This includes water for future use. When establishing water rights, courts or negotiation teams will look to the documents that set aside reservations, which can be a Treaty or an Executive Order, to establish the priority date and the purposes of that reservation. It is important to remember that the right to sufficient water to fulfill the purposes of the reservation is IMPLIED. There does not need to be an express language reserving the water. In addition, it is important to know that Federal Indian Reserved water rights cannot be lost through abandonment or forfeiture due to non-use.

The Southern Ute Indian Tribe and Ute Mountain Ute Tribe have a water settlement. Both Tribes negotiated a water settlement with the State of Colorado and the United States in 1986. The 1988 Colorado Ute Indian Water Rights Settlement Act affirmed the 1986 Settlement Agreement; recognized

tribal water rights for all surface streams and tributary groundwater on both reservations; authorized the Animas-La Plata ("ALP") Project as part of the settlement; and satisfied the congressional cost-sharing requirement for the ALP Project. The settlement authorized municipal, industrial, and irrigation water uses for the ALP Project. However, there were significant environmental concerns despite the completed environmental documentation. There were also significant cost concerns related to the irrigation component of the ALP Project. In 2000, amendments were made to the Settlement Act, which required court approval. These amendments only applied to the Animas and La Plata Rivers. The 2000 Amendments were made through federal legislation and are not in the settlement agreement. The 2000 amendments eliminated the irrigation components of the ALP Project. In exchange, the U.S. included $40M for a Tribal Resource Fund with the requirement that $30M be spent in partnership with surrounding communities.

After the 2000 Settlement Act Amendments were enacted, construction on the ALP Project began. Lake Nighthorse was full by 2011. There are challenges for the two Tribes to access their water from the ALP Project. First, both Tribes lack the infrastructure to use the water from the ALP Project. Second, the two Tribes lack funding to build that infrastructure to put to use for municipal or industrial uses. Third, the Tribes are required to pay Operation & Maintenance fees once they begin using the water, and those fees are extremely high, thus the Tribes must find cost-effective and/or profitable projects to use the water for. Last, Ute Mountain Ute Tribe has not been able to negotiate an acceptable Repayment Contract.

The Southern Ute Indian Tribe has a second water project, the Pine River Indian Irrigation Project. The Bureau of Indian Affairs ("BIA") constructed the PRIIP in the late 1800s into the early 1900s and they still operate the PRIIP. This Project delivers irrigation water to Southern Ute tribal members and to non-Indians, including the Town of Ignacio, CO. The PRIIP is in extreme disrepair. There are approximately 175 miles of canals with an estimated 15% that is in good repair. No major repairs have been made since the 1960s. Many of the structures are failing due to erosion and poor maintenance. Erosion has created miles of incised canals and ditches with elevated headgates which no longer allow for diversion to occur. The PRIIP water users pay for 100% of the Project's operation and maintenance (O&M) annual assessments, but the fees are insufficient to cover the necessary O&M work. The fees are also too low to address the deferred maintenance costs. And the O&M costs are too high for the individual tribal members who use the water, so the Tribe must assist with those costs. The Tribe has also used $4M of its own funds to pay for rehabilitation of structures in poor condition.

The Ute Mountain Ute Tribe also has a second water project, the Dolores Project, which was first authorized in 1968 for municipal, industrial, and irrigation uses. The Dolores Project was constructed in 1988, and brought drinking water to the Ute Mountain Ute Tribe's members for the first time in history. The Project allowed the Ute Mountain Ute Tribe to be economically viable. The access to drinking water in 1988 also allowed the Tribe to build a casino and hotel. Irrigation water from the Project is also delivered to the Ute Mountain Ute Farm and Ranch Enterprise to grow corn and feed to support the Ute Mountain Ute Bow and Arrow Corn Mill brand and the Bow and Arrow Cattle herd. The tribal enterprises that are supported by the Dolores Project employ 20% of the Ute Mountain Ute tribal population. The largest challenge for the Dolores Project and Ute Mountain Ute Tribe is the ongoing drought. In 2021, the Tribe received only 10% of its normal water supply, and in 2022, the Tribe only received 40% of its normal water supply. In 2021, the Tribe had to disk and spray 6,000 acres of fallowed land at a cost of $2M+ with almost no crop income with which to replant the farm when a full water supply became available in 2023. The Tribe had to pay 100% of the operation and maintenance fees even though they were not receiving their full water supply. They were able to negotiate some

relief from operating costs with the U.S. Bureau of Reclamation during the period when water supplies were low, but those negotiations took over 2 years.

Climate change is hitting the Colorado River Basin particularly hard. There is an on-going 23-year drought. The effects of the on-going drought are less snow, less water for irrigators, longer fire season, aridification, water quality issues, and more. As mentioned above, the Ute Mountain Ute Tribe's Farm and Ranch was negatively affected by the drought. The Southern Ute Indian Tribe has also been impacted by the ongoing drought. Tribal irrigators have not received their full allocation of irrigation water from the Florida River. The area is getting hotter, with less snow, which means less snow melt. We are seeing earlier runoffs. Vallecito Reservoir saw an early peak runoff 4 weeks earlier than normal in 2022.

Recommendations

Introduction

At their December 8th meeting, held virtually, Sub-Task Force members voted on proposed Recommendations for the legislature. Voting was done by roll call with majority vote winning. Members decided to vote in the same manner as the larger Drought Task Force:

- Yes/Yes with comment
- Present
- No/No with comment

In addition they included the possibility of including a Minority Report if proposals were voted down. However, all proposals that went to a vote were adopted as recommendations. **Recommendations passed by the Sub-Task Force are a recommendation of the concept, and not necessarily the specific language of the proposal and should be read with this in mind.** Two proposed recommendations were moved to the "narrative" category.

1. Request for funding to conduct a study on a potential pilot program to compensate Tribes for future forbearance of water development.

The Southern Ute Indian Tribe and Ute Mountain Ute Tribe both have a water settlement in place. Both Tribes have been unable to fully develop those settled and quantified water rights to benefit our homelands and tribal members. There are many challenges that contribute to the inability to develop the water including lack of infrastructure, lack of funding, and requirements of the settlement. In recent years, the two Tribes have watched many water users participate in federal and state programs to conserve or temporarily forbear use of water rights in exchange for monetary compensation. Because the Tribes have not already been using this water, they are not authorized to participate in the conservation programs which require that the forbearance reduce current water that is being beneficially used. In the meantime, downstream junior water users are able to enjoy and become dependent on undeveloped tribal water, and potentially participate in those same conservation programs. Thus, the Tribes are left in the position of watching their undeveloped water flow downstream to the benefit of others with no ability to receive compensation for it.

There is a need for a separate program for Tribes to be compensated for that undeveloped water which is currently benefiting the Colorado River system and junior water users. The

Sub-Task Force would like to explore whether the State of Colorado and the two Tribes are able to develop a pilot program to compensate the two Tribes to forbear water development for a set number of years.

The Sub-Task Force recommends and requests that a grant be provided to engage in an expert analysis of the quantity of water potentially available, the impacts of contributing that water to the Colorado River system, the appropriate level of compensation; funding sources for a pilot program; potential benefits for all involved; and all additional technical, legal, and fiscal details of such a program. It is anticipated that such an analysis could be done for not more than $250,000, given existing data which can be made available to the analysts.

No immediate legislative action is requested, but possibly in the future.

2. Request for the Colorado General Assembly to work with Governor Polis to send a letter to the U.S. Congress to Request that it fully appropriate $35M that is authorized for the Indian Irrigation Fund pursuant to the Water Infrastructure Improvements for the Nation Act ("WIIN Act," Pub. L. No. 114-322).

Southern Ute Indian Tribe is in need of funding for its Pine River Indian Irrigation Project (PRIIP). The PRIIP is an Indian Irrigation Project intended to bring water to Tribal lands for agriculture. It was constructed by the Bureau of Indian Affairs (BIA) during the late 1800s and early 1900s and is still operated by the BIA. The PRIIP should be providing water to approximately 12,000 acres and nearly 400 individual users, including approximately 100 non-Indians and the Town of Ignacio, but due to extreme deterioration of its infrastructure, it falls far short of that goal. An assessment of the PRIIP commissioned by the BIA in 2008 identified a maintenance backlog of over $20 million. A different assessment performed in 2000 by the BIA's Office of Trust Responsibility found that the cost to completely rehabilitate the system, including upgrading equipment and other non-structural items, would be closer to $67 million ($109 million in today's dollars). In 2023, the BIA completed a modernization plan for the PRIIP which has a rough cost estimate of $60.7 million. The Tribe started a multi-year duration program to rehabilitate portions of the PRIIP using $4.88M of tribal funding in 2018 but is running short on funding to finish construction on completed engineering designs.

The deteriorated condition of the PRIIP means that some of its users are unable to access and use water for agricultural irrigation. Despite this condition, users have seen rates for operation and maintenance increase over recent years even while the PRIIP continues to fail to deliver water for their use. PRIIP water users pay 100% of the project's operations and maintenance ("O & M") annual assessments, but these fees are simply insufficient to accomplish the necessary annual O & M work, much less the millions required to address deferred maintenance.

Funding to address some of the PRIIP's needs was authorized in the Water Infrastructure Improvements for the Nation Act ("WIIN Act," Pub. L. No. 114-322). Enacted in 2016, the WIIN Act establishes the Indian Irrigation Fund (the Fund) in the Department of the Treasury to address the deferred maintenance, repair, and replacement needs of various Indian irrigation projects in the western United States. The WIIN Act came as a great relief to Southern Ute,

but repairs under the WIIN Act met an unexpected delay. While the WIIN Act authorized funding for this critical purpose the actual appropriations and allocations have fallen far short.

The Act directs the Secretary of the Treasury to deposit $35 million annually through fiscal year 2028 into the Fund, with such sums plus accrued interest to be transferred to the Secretary of the Interior for distribution by the Bureau of Indian Affairs. However, since its inception, Congress has only appropriated $10 million per year for the Fund. Not only does the level of appropriation fall far short of the demonstrated need, continued delay simply adds to future costs as deterioration of failing systems continues.

The Sub-Task Force requests that the Colorado General Assembly work with Governor Jared Polis to send a letter to the U.S. Congress to request that it fully appropriate the full $35 million that is authorized for the Indian Irrigation Fund.

3. Ability to Waive Match

The Ute Mountain Ute and Southern Ute Tribes have the opportunity to develop water infrastructure to put to beneficial use their Federal Reserved Water Rights. These opportunities are a result of substantial and recent progress in bringing the Tribes into policy discussions to assert Tribal rights in processes to address Colorado River Basin Issues. These opportunities are also a result of Tribal access to the substantial increase in the availability of state and federal funding to assert and develop Tribal water rights and related infrastructure.

The State of Colorado can play a dual role by directly funding Tribal water projects while providing matching leverage for securing Federal funding for these purposes. A major obstacle to the Tribes taking full advantage of these greatly expanded opportunities are matching requirements. In short the Tribes have an abundance of much needed funding opportunities, with very limited financial capacity to meet matching requirements. Accordingly, the Tribes have requested that the State of Colorado waive matching requirements for Water Plan Grants, and others with a similar purpose of expanding opportunities for efficient water resource uses, development, and conservation.

The Sub-Task Force recommends that the General Assembly remove the statutory requirement in C.R.S. 37-60-106.3 6(c) for matching funds of at least twenty-five percent for Water Plan Implementation Grants and provide the Colorado Water Conservation Board discretion to waive or reduce matching fund requirements for grants to Tribal Nations and Tribal enterprises.

The Sub-Task Force also recommends that the Colorado Water Conservation Board review policies and procedures on waiving or reducing Colorado Water Conservation Board grant match requirements with the Southern Ute and Ute Mountain Ute Tribes to facilitate the Colorado Water Conservation Board's consideration of specific Tribal requests to waive matching requirements.

Recommendations include legislative action and CWCB agency engagement.

4. Cultural Protection of In Stream Flow

The Ute Mountain Ute Tribe's Members have harvested various plants and animals along rivers and streams for generations and depend on these cultural resources for ceremonies and wellness. The Ute Mountain Ute Tribe requests the opportunity to work with the relevant state agencies and stakeholders in order to determine whether there is a suitable mechanism to include these cultural values for protection in in-stream flows and whether there are locations within the state where such protections may be implemented. The parties agree to engage in a broad stakeholder process prior to moving forward with any legislative changes.

No immediate legislative action is requested, but possibly in the future.

Recommendations Considered but Not Approved

None.

Narratives

Introduction

Items included in the narrative are topics that were raised during Sub-Task Force meetings and that the members of the Sub-Task Force believe are important topics in need of further discussion. They may not require legislative action. **Items included in the narrative were not voted on by the Sub-Task Force and therefore, as written, and should not be viewed as endorsed by the Sub-Task Force. In addition, the information provided in the statements has not been vetted.** The inclusion of these items is only meant to convey that the Sub-Task Force believes these items are important and in need of more conversation going forward.

i. Adjustments to Allowable Tribal Water Uses on Reservations

As it currently stands, both Tribes are limited by federal law to using their federal reserved water rights for specific purposes, such as irrigation or municipal and industrial uses, yet those uses do not always serve the best interests of the Ute Mountain Ute Tribe or its members. In order to ensure that the Ute Mountain Ute Tribe is able to utilize their water rights for the most suitable purpose, the Ute Mountain Ute Tribe is requesting that the state engage with the Ute Mountain Ute Tribe in order to determine whether and how the state can support the Ute Mountain Ute Tribe's efforts to allow the Ute Mountain Ute Tribe to utilize their federal reserved water rights anywhere within the Colorado portion of their reservations and for any purpose that they see fit.

ii. OM&R requirement in the Colorado Ute Settlement

The federal legislation implementing the Colorado Ute Indian Water Settlement imposes the responsibility on the Tribes to pay a proportional share of the fixed Operation, Maintenance, and Repair costs at Lake Nighthorse forever based upon the proportional share of their

water right that was depleted. This renders the Ute Mountain Ute Tribe's water prohibitively expensive. However, the law allows the Secretary of Interior to waive this requirement at her discretion and the Ute Mountain Ute Tribe saw an example of this exercise of discretion at McPhee Reservoir when, in 2021, despite receiving only 10% of its water and submitting a request to the Secretary to exercise her discretion and reduce the Ute Mountain Ute Tribe's OM&R obligation for that water year, the Secretary refused to grant the request resulting in severe hardship to the Tribe.

RESOURCES

To access all documents shared with the Drought Task Force and Sub-Task Force and listed below, please visit www.crdroughttaskforce.com/resources.

List of Documents Informing Drought Task Force and Sub-Task Force Recommendations and Discussions (listed in alphabetical order):

- Alternative Transfer Methods - Status Report
- An Enhanced Water Bank for Colorado
- Assessing the Potential Impact of Invasive Species Water Use
- Biden Harris Administration Continues Commitment to Protect Stability and Sustainability – Deptartment of Interior
- Colorado River Basin Ten Tribes Partnership Tribal Water Study, Chapters: 1, 2, 5.2, 5.3, 6, 7
- Colorado Forest and Water Alliance - CWP2
- Colorado River District - Conceptual Market Framework
- "Colorado River is in crisis despite strong rain and snow, experts say" - Denver Post
- Colorado River Water Bank Feasibility Study - Phase 1 and Phase 2 Reports
- Conceptual Framework - Colorado Water Plan, 7 Points - CWCB
- Critical Community Watershed Wildfire Protection Plans - Guidelines for Implementation
- CWCB Demand Management Policy Statement
- CWCB Loan and Grant Programs
- Demand Management Feasibility Investigation - CWCB Body of Work
- Demand Management Feasibility Investigation Summary and Fact Sheet
- Drought Task Force Letter, from CWCB - 7/28/2023
- Eight Colorado Environmental Projects to Increase Water Availability - GJ Sentinel
- Energy Transition Water Planning Horizon Draft Documents from Jackie Brown
- HB05-1177 Water for the 21st Century Act
- HB20-1157 Loaned Water For Instream Flows To Improve Environment
- Instream Flow Rules
- Interbasin Compact Committee Website
- The Future of Introduced Tamarisk in the U.S.
- Policy Brief #5 - Tools for Tribes
- Projects Bill Language
- Colorado River District Risk Study - Phases I - IV
- Rules Governing the Arkansas River Water Bank Pilot Program
- Salinity Control Forum Memo - July 14, 2015
- Special Report No. 25 - Colorado Water Institute - Use It or Lose It

State of Colorado Executive Order D 2023 018

Tamarisk and Russian Olive Evapotranspiration Report - April 16, 2009

"Think big! Colorado water projects on tap for $800M to $1.2B in federal money" -Fresh Water News

UMUT Farm and Ranch 2021-2023 Crops

Upper Basin Demand Management Economic Study in Western Colorado

Water Plan Grant Guidelines

White Paper, 9-2020 - Colorado Water Trust

WRA Drought Task Force Memo

List of Documents and Presentation Slides From Meetings

8-10-2023 Compact Compliance by Kevin Rein SEO

8-10-2023 CRD Drought Task Force Presentation by Andy Mueller

8-10-2023 CRDTF Slides

8-10-2023 Demand Management Presentation by Amy Ostdiek

8-10-2023 OML, CORA presentation to CRDTF by Megan McCall

9-12-2023 SUIT-UMUT Tribes PPT for Sub-Task Force Meeting

9-14-23 SEO Tools - List of Tools Compiled by the State Engineer's Office

10-26-2023 Intrastate Poll Results

10-26-2023 Tribes PPT for Drought Task Force Meeting

11-8-23 Short List of Concepts for Further Consideration (working document)

11-29-2023 Tribal Sub-Task Force - Water Funding Slides

CRDTF Proposed Voting Process

CRDTF Voting Tally Sheet for 12-7-2023

Drought Task Force and Sub-Task Force Working Documents

The following documents are shared google docs, housed on the Resources page of the website. This allowed members of the Task Force and Sub-Task Force on Tribal Matters to craft content, provide suggestions, and edit the documents in a transparent and publicly accessible manner. In addition, it allows for the preservation of content changes over time.

Draft Final Report (Working Document)

Short List for Further Discussion (Working Document)

Proposal Template (Working Document)

Sub-Task Force (Working Document)

Intra-Interstate Tools Worksheet

Water Sharing Tools (Working Document)

For a list of letters received by the Colorado River Drought Task Force and Sub-Task Force on Tribal Matters from agencies, organizations, and groups, please visit the website and scroll down to "Letters To the Task Force".

LIST OF ACRONYMS

AMI	Advanced Metering Infrastructure
ARPA	American Rescue Plan Act
BIA	Bureau of Indian Affairs
CWCB	Colorado Water Conservation Board
CDPHE	Colorado Department of Public Health and Environment
CORA	Colorado Open Records Act
CPW	Colorado Parks and Wildlife
CRSP	Colorado River Storage Project
CRWCD/ Colorado River District	Colorado River Water Conservation District
CWP²	Critical Community Watershed Wildfire Protection Plans
CWPP	Community Wildfire Protection Plans
DCP	Drought Contingency Plan
DNR	Colorado Department of Natural Resources
DPR	Direct Potable Reuse
HCU	Historic Consumptive Use
HFRA	Healthy Forests Restoration Act
IBCC	Interbasin Compact Committee
ISF	Instream Flow
OLLS	Office of Legislative Legal Services
O&M	Operations and Maintenance
OML	Open Meetings Law
OM&R	Operation, Maintenance, and Repair
PRIIP	Pine Ridge Indian Irrigation Project
SCPP	System Conservation Pilot Program
SUIT	Southern Ute Indian Tribe
SWCD/ South-western	Southwestern Water Conservation District
SWSP	Substitute Water Supply Plans
UCRC	Upper Colorado River Commission
UCREFRP	Upper Colorado River Endangered Fish Recovery Program
UMUT	Ute Mountain Ute Indian Tribe
WIIN	Water Infrastructure Improvements for the Nation Act
WPIF	Water Plan Implementation Fund
WSRF	Water Supply Reserve Fund

APPENDIX

Utility Water Rights Impacted by Proposed Drought Task Force Legislation

Note: This table does not include water rights for which historical consumptive use has been quantified

Xcel Energy

Facility	Conditional Decreed Amount		20-year Average Annual Usage	
Division 1	CFS	Acre-Feet	CFS	Acre-Feet
Pawnee Station		702		2377*
Fort St Vrain Station			29.34	1190
New Thomas Reservoir				420
Lagerman Reservoir		252		50 (estimated)
Valmont Reservoir				2355
Wellman Canal				70
Cabin Creek Reservoir		308		
Murray and Silver Dollar Reservoirs		520		
Clear Lake Reservoir				210
Cherokee Station	38.76			523
Division 6				
Hayden Station	37.15	40000		3949*
Steamboat Lake		5000		

*Pawnee and Hayden Station are zero-liquid discharge facilities

Tri-State Generation and Transmission Association

Facility	Conditional Decreed Amount		Absolute Decreed Amount	
Division 1	CFS	Acre-Feet	CFS	Acre-Feet
J.M. Shafer Generating Station	4.82	700		
Division 2				
Hub Thompson Res.		70000		
Groundwater Rights	55			
Divison 4				
Nucla Power Plant				1265*
Lake Hope		2315		
Trout Lake		3,025.30		396.7 abs
New Horizon mine			2.0 abs**	142.5 abs
Division 6				
Craig Station*				13350*
Elkhead Res.		453		11,002.3 abs
Holding Ponds total		41.38		2503.9 abs
Colowyo			39.7	104

*This figure approximates annual consumptive use.

**This figure excludes changed shares-Colorado Cooperatve Corporation.