



November 7, 2023

Dear Attorney General Weiser:

Thank you for your continued willingness to engage with the agricultural community on water issues. We really appreciate the outreach from your office and the commitment to bringing our industry to the table regarding potential solutions for the Colorado River Drought Task Force to consider. The issues being discussed are extremely important to Colorado's farmers and ranchers and we appreciate the continued dialog.

Below are some comments on the recommendations your office has submitted to the Task Force. Protecting property rights will be fundamental to garnering support for any program that the state may want to put into place. We encourage thoughtful reconsideration of your recommendations with a stronger emphasis on protecting the prior appropriations doctrine system of water rights administration and private property rights in general.

Reversion of Present Perfected Water Rights Otherwise Subject to Abandonment

- Our coalition finds it problematic to allow abandoned water rights that predate the Colorado River Compact be reverted to the state because in general we do not support the state assuming water rights.
- This proposal creates an alternative system of water use outside of the prior appropriations doctrine. It appears that the state would be able to gain control of this water and change the use potentially different than the presently decreed water right without Water Court approval or allowing other water rights owners to file an objection. Any proposal to protect pre-compact water rights through a change of use must go through the proper Water Court process. This proposal would potentially result in serious injury to other water rights on the same stream. If a senior water right is not being used and hasn't been for numerous years, which would be the requirement for it to be listed for abandonment, other water rights owners would have been using that water for years through rights junior to that specific right.
- We recognize the importance of pre-compact water rights and the use of this water by Colorado, especially considering a compact call. Multiple State Engineers, under various administrations, have kept pre-compact water rights off the decennial abandonment list on the Colorado River. Are there existing legal issues around this that should be addressed? If so, what alternate options could be discussed to address those legal issues outside such a far-reaching precedent in this proposal?
- Is there data that shows how much water is associated with water rights senior to the compact and the potential for abandonment? Can you provide for us the amounts, type of water right, location, beneficial use, timing, as set forth in those decrees? Would allowing for this water to be held by the state result in meaningful compact compliance? Without that data it simply looks like the state is trying to develop another instream flow program that makes water not be available for consumptive beneficial uses under the umbrella of meeting our compact obligations.
- Any plan to shepherd water to the state line for compact use must not injure other water rights. There is no mention in this proposal of how the state would ensure that injury doesn't occur.
- We are staunch supporters of the prior appropriations doctrine and believe that water rights need to be protected. This proposal essentially creates a "super water right" owned by the state and



provides a perverse incentive for the state to assume water rights through abandonment. This weakens water administration through the prior appropriations doctrine and takes the state closer to a policy of public trust administration.

Wildfire Resilience Program

- We support the concept of the state creating additional programs and increased funding to proactively manage forests. We strongly believe that an important tool to proactively manage our forests is through proper grazing management. Livestock grazing on public lands and in our forests is under great threat of elimination and we encourage the state to proactively support the livestock industry and support public lands grazing.

Requiring Cooperation Between State Agencies, Concurrent Permit Review, and Timetables for Permitting Water Infrastructure Projects

- We support reasonable permitting reform that streamlines and speeds up the process of securing permits. Strong oversight of a permitting program is necessary but should not make the process more complicated or slower.

Authorizing Temporary Conservation Easements for Water Rights

- A priority of our coalition is to make sure that any agricultural water right that is dried up for compact compliance must be done so in a way that is voluntary, temporary, and compensated. This proposal is an interesting way to ensure these requirements are met but the mechanism of how this type of program would work must be carefully thought out. The principals behind this proposal resemble current alternative transfer methods and lease agreements that are in place for temporarily using water. We support mechanisms that allow agricultural water users to benefit from the value of their water rights without the permanent transfer of the rights, and without adverse impacts to the local communities and the regional economies. We would prefer to not refer to these as temporary conservation easements as we do not want to adversely affect the integrity of the conservation easement program in Colorado.
- Under current conservation easement programs, the incentive to participate is tied to the availability of tax credits. There is an almost universal requirement that these tax credits be tied to permanent conservation easements. Would a temporary water compact conservation easement work with tax credits being offered as an incentive?
- If an agricultural producer is interested in a temporary water compact conservation easement, they likely need the financial resources immediately. A tax credit might not be as attractive because of the delayed financial impact.
- This proposal appears to be only focused on groundwater. Is it your intention that this proposal be all-inclusive of tributary, non-tributary, not non-tributary groundwater? Would it apply to designated groundwater basins? There are limited groundwater resources in the Colorado River Basin so we would like to know if there is data about how much water this could impact with regards to Colorado River Compact needs.

Funding Investments in Fulfilling the Colorado Water Plan

- The state has made great strides in recent years to increase funding towards the Colorado Water Plan. We encourage more investment in existing infrastructure. We also highly encourage the state



to prioritize projects that benefit agricultural water infrastructure. The agricultural industry will bear the main impact of any compact call and steps must be taken to ensure the industry is prepared.

Innovative Projects Pilot Program

- Ensuring that there is a vibrant agricultural economy is vitally important. Any program to encourage wise water use in agriculture must also include strong protections against injury to other water rights. A farmer or rancher must also be assured that any conservation efforts will not impact the value of the water right (protect against abandonment).
- Quite simply if there is a market for crops that use less water farmers will grow them. Encouraging more water-efficient crops without a market will not work.

Developing and Supporting Smart Technologies for Water Management

- Priority for this investment should be for strategies specific to Colorado agriculture and must also protect against injury to other water rights.

Driving More Effective Potable Re-use Strategies

- We encourage our municipal and industrial partners to implement reuse strategies as much as possible. We believe that great strides have been made in this area and encourage the state to provide more incentives to achieve even more. Careful consideration to protecting against injury and impacts to return flows must be included.

Again, we thank you for your engagement with the agricultural industry. Our coalition stands ready to be a resource to you as you continue these very important discussions.

Sincerely,
Colorado Farm Bureau
Colorado Cattlemen's Association
Colorado Livestock Association
Rocky Mountain Farmer's Union

Cc:
Members, Colorado River Drought Task Force
Speaker of the House Julie McCluskie
Representative Marc Catlin
Senator Dylan Roberts
Senator Perry Will
Kate Greenberg, Commissioner of Agriculture, Colorado Department of Agriculture
Dan Gibbs, Executive Director, Colorado Department of Natural Resources
Lauren Ris, Director, Colorado Water Conservation Board
Kevin Rein, Director, State Engineer, Colorado Division of Water Resources
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