



December 5, 2023

Drought Task Force Members,

On behalf of the Moffat County Board of County Commissioners, we would like to offer feedback regarding the “Short List of Concepts for Further Consideration by the Colorado River Drought Task Force (Working Document)”.

1. Overriding Concern:

Moffat County urges the Task Force to continually reflect on the intent of SB 23-295, to “provide recommendations for programs to assist Colorado in addressing drought in the Colorado river basin and interstate commitments related to the Colorado River and its tributaries.” Each proposal should pass the test of addressing drought through interstate commitments. We are concerned some of the proposals focus on intrastate rather than interstate solutions.

2. Industrial Water:

Abandonment:

Moffat County understands the logic behind the proposal to provide an “exception to abandonment period,” and we can support a 2050 extension for abandonment of absolute water rights of industrial water for a thermo-electric utility (i.e. the Craig Station), as it could help justify future investment into our community, that has suffered jobs and tax-base loss due to power plant closures. In addition, we understand it to be a significantly higher bar to prove diligence on an absolute water right, than a conditional water right, and opportunity for mischief that should not occur if a community has hope of thermo-electric replacement of jobs and tax base similar to a coal fired plant, into the future.

Therefore, we cannot support a 2050 deadline for extending water rights for conditional water rights as it is extremely achievable to extend abandonment dates for conditional water rights, under the existing system of proving “due diligence” on conditional water rights.

We also cannot support extending the abandonment period for industrial coal mine water or other water not related to thermo-power generation (i.e. water rights on Colowyo agriculture land). This creates an

awkward situation of favoring property because it has coal associated with it. Conflicts, unequal playing field, and special treatment will exist for these properties that other industry (i.e. oil and gas) or typical agriculture operations cannot utilize.

Pilot Loan Program:

Moffat County believes there is no need for a loan program if the utilities are committed to not harming current agriculture water rights. Assuming the 2050 deadline is granted for abandonment and protection of industrial Historical Consumptive Use (HCU), there is no benefit to the loan program. This is because the same amount of water will be in the stream (unused industrial water – current uses = same amount of water regardless of whether or not the loan program exists). Therefore, we support the foundational principle that water released for a proposed loan program must be available for first use in existing agriculture diversions up to the users HCU. Remaining water can then be available for purposes of the loan program, (i.e. natural environment). Moffat County does not support the pilot project task force proportioning agriculture water (i.e. 50% of HCU). It is critical that agriculture is not placed in a position to “negotiate” how much water they can utilize each season. They should be able to utilize their full HCU. We believe there is not enough water demand in agriculture rights that will utilize all the water in a potential loan program, and there will plenty of water to provide natural environment benefit. Examples in the past prove this point. Previously, Elkhead reservoir releases that were “free to the river” were proven to benefit the natural environment and arrived at the lowest calling point on the Yampa.

Future Revenue flowing for the Natural Environment:

Although there is not revenue projected for the proposed loan program today, there is a potential that federal programs could exist where Tri-State would be compensated (either in dollars or credits) for water released for natural environment uses. Moffat County requests a commitment today, that potential revenues or credits received from such water, be utilized in the Yampa Valley as close to the historic diversion points as possible. Considering Tri-State is proposing closing its power plant in Craig, in 2028, we are concerned that monetization of water rights could be taken to other states or credits be provided to Tri State outside of the community in which the water originated. Monetization from water of the Yampa Valley should stay in the Yampa Valley, for the benefit of the local community.

3. Water Banking:

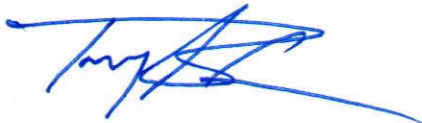
Moffat County cannot support banking water with direct flow water. Moffat County supports the River District’s position on several sideboards being needed to support water banking of direct flows. Moffat County is not aware of a stored water bank that has been utilized in Colorado, so we find it less plausible that a direct flow water bank would be utilized. In addition, we are concerned that the direct flow bank may provide a venue to shift water out of agriculture, into urban uses. And most importantly, this proposal focuses on intrastate benefit which falls outside the criteria of SB 23-295 for interstate benefit for drought.

4. Shepherding:

One key danger is that, for the most part, only large senior water rights on the main stems of our rivers have actual wet water during low flow seasons. This proposal needs to be modified so that any future program assures the primary interstate purpose is met, delivering water to the end point. No single tributary nor river basin should bear all obligation for water delivery. Water supply should be proportional from tributaries within a river basin and proportionally between river basins of Colorado.

Moffat County shares the same concern regarding shepherding water in "specific stream reaches" that we have with the Pilot Loan Program, agriculture water right protection. Water should not be shepherded beyond agriculture diversions without those water rights having the ability to utilize the water up to their HCU. In addition, it is unlikely there are measuring devices along the Yampa for measurement (shepherding) to occur in segments. In addition, water shepherded in a specific stream reach does not comply with the proposal in benefiting interstate commitments as required by SB 23-295.

Sincerely,



Tony Bohrer, Chairman
Moffat County Commissioners