

B 005 07

EXECUTIVE ORDER

Creating the South Platte River Basin Task Force

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, I, Bill Ritter, Jr., Governor of the State of Colorado, hereby issue this Executive Order creating the South Platte River Basin Task Force.

1. Background and Need

In 1969, the General Assembly passed the Water Right Determination and Administration Act (the “1969 Act”), dramatically changing the law governing tributary ground water in Colorado. One of the most significant changes included a requirement that all tributary wells be integrated into the prior appropriation system. This has led to debate among and instability for water users. For twenty-five years, up until approximately 2000, ground water users had some temporary stability by operating under State Engineer approved annual substitute water supply plans (SWSPs), but senior water users in the South Platte River Basin remained concerned that the temporary plans were inadequate to protect their water rights.

From 1974 to 2001, there were approximately 4,000 pre-1969 wells operating in the South Platte River Basin under SWSPs, which were authorized by the State Engineer annually. In December 2001, the Colorado Supreme Court handed down its decision in *Empire Lodge Homeowner’s Association v. Moyer*, 39 P.2d 1139 (Colo. 2001), holding that the State Engineer did not have legal authority to approve SWSPs under the statute that had historically been relied upon.

During the 2002 session, the General Assembly responded to the *Empire Lodge* decision by enacting House Bill 02-1414, which was codified as C.R.S. § 37-92-308. This granted the State Engineer authority to review and approve SWSPs under specific and limited circumstances. On May 31, 2002, the State Engineer filed proposed rules with the water court that would have created a process for the State Engineer to annually review and approve “replacement plans,” and would have authorized continuing out-of-priority depletions by pre-1972 wells. More than thirty individual and entity water users opposed the proposed rules; a handful actively supported them.

In April 2003, the Colorado Supreme Court clarified the authority of the State Engineer to review and approve SWSPs in its decision in *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50 (Colo. 2003). In that case, the Court held that the replacement plans contemplated by the proposed rules were the functional equivalent of augmentation plans, that the State Engineer did not have legal authority to review and approve such plans except for the authority expressly granted to him by the General Assembly in C.R.S. § 37-92-308, and that the review and approval of augmentation plans is within the exclusive jurisdiction of the water court.

Following the *Simpson* decision, then-Attorney General Ken Salazar convened a task force to study the issues regarding the State Engineer's authority and the continued ability of well users to pump without first going having their water rights adjudicated in water court. The task force presented the General Assembly with recommended legislation to remedy some of the problems the task force identified. Thereafter, the General Assembly passed Senate Bill 03-73, which substantially modified the State Engineer's authority regarding approval of substitute water supply plans.

During this same time period, in 2002, Colorado was experiencing one of the worst droughts on record. This drought had dramatic effects on water users in the South Platte River Basin. These effects included increased scrutiny of water court cases by other water users, increased water rights administration in the non-irrigation season because of reservoir calls, and increased cost and decreased availability of augmentation water. These are among the many factors that have made it more difficult for some junior ground water users to be able to pump water.

Although these issues have been studied, discussed, and litigated numerous times, they should be revisited in order to determine whether there are any further solutions that the State of Colorado can implement in order to bring relief to junior water users, without adversely impacting senior water right holders. The mission of the South Platte River Basin Task Force is to bring together a broad range of stakeholders to analyze the existing situation, identify the key issues, and explore potential solutions.

2. Mission and Scope

The Task Force is charged with clearly articulating the problems faced by water users in the South Platte River Basin and recommending potential solutions. Specifically, the Task Force is to consider whether there are any changes to current water law or policy that will provide relief to junior ground water users without injuring senior water right holders.

To that end, the Task Force shall:

- A. Conduct two meetings to solicit information from the public regarding the issues facing water users in the South Platte River Basin and to gather suggestions for potential solutions. These meetings shall be held in two different locations within the South Platte River Basin in to order bring

stakeholders together from around the Basin and to ensure that the public has an opportunity to provide input to the Task Force.

- B. Conduct at least four meetings during which the Task Force shall discuss and consider the information gathered during the public meetings, and evaluate options for potential solutions to the issues identified by members of the Task Force and the public.
- C. Prepare a final report no later than September 30, 2007. In that final report, the Task Force shall make its recommendations regarding any policy changes, including but not limited to recommendations for legislative changes. The Task Force shall make every effort to reach consensus on its final report. Recommendations contained in the Task Force's final report shall only be adopted upon a two-thirds vote of the Task Force members.
- D. The final report shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chair of the Interim Committee on Water Resources.

3. Membership

- A. The Task Force shall consist of up to twenty-five voting members, appointed by the Governor, representing the following stakeholders or groups: junior and senior water right holders; ground water and surface water users; municipalities; members of the General Assembly; and representatives from the Departments of Natural Resources and Agriculture. Any individual member may represent more than one of the enumerated categories.
- B. The Executive Director of the Department of Natural Resources and the Commissioner of Agriculture shall be voting members of the Task Force and shall serve as its co-chairs.
- C. The Task Force shall have the following non-voting *ex-officio* members, appointed by the Governor: one representative of the Governor's Office of Policy and Initiatives; up to two attorneys to serve as legal advisors to the Task Force; and up to two engineers to provide technical advice to the Task Force.
- D. The Task Force may create subcommittees as needed to address specific issues.

4. Staffing and Resources

In addition to staff at the Department of Natural Resources and Department of Agriculture, the Task Force shall have the power to accept money and in-kind contributions from private entities, but only to the extent such donations are necessary to cover its expenses. Any money contributed to the Task Force shall be directed to the Office of the Governor and deposited with the Treasurer of the State of Colorado in an account within the Office of the Governor's budget. Members of the Task Force shall serve without compensation, but may, at the discretion of the co-chairs and upon the approval of the Office of the Governor, be reimbursed for any actual expenses incurred.

5. Directive

The South Platte River Basin Task Force is hereby created.

6. Duration

This Executive Order shall remain in force until September 30, 2007, at which time the Task Force shall be dissolved.

GIVEN under my hand and the
Executive Seal of the State of
Colorado, this 8th day
of June, 2007

Bill Ritter, Jr.
Governor