

SOUTH PLATTE RIVER BASIN TASK FORCE

June 29, 2007

**Union Colony Civic Center
701 10th Avenue, Greeley, Colorado**

LEGAL AND TECHNICAL BRIEFING

Call to Order - Director Harris Sherman and Commissioner Stulp

Mr. Sherman thanked all members of the Task Force who were willing to serve on this important project. He stated that all proceedings will be recorded. The Department of Agriculture put together a web page for the South Platte River Task Force where all documents submitted to the Task Force will be posted.

Technical Presentation - Dick Wolfe

Mr. Wolfe's Power Point presentation was included in the notebooks and is posted on the Task Force website (<http://www.ag.state.co.us/SouthPlatteTF.html>). Mr. Wolfe defined the physical system by the geographic boundaries of the South Platte River and its tributaries in Colorado extending from the surface to the base of the alluvial ground water aquifers. He provided a perspective of what the Task Force is dealing with in the physical system and stated that this does not include areas in the Designated Ground Water basins since they are handled differently in terms of rules and regulations. Colorado has compact obligations to maintain and water has to be passed to downstream states to meet its obligations. Most of the population in the state and the largest amount of irrigated area is located in the South Platte basin, however, the basin does not contain the largest amount of water. Therefore, water is imported from the western slope. Mr. Wolfe also discussed the basic hydrology of the system, the changes in water supply, availability, use and administration. The system that is in place now and the development of plans for augmentation keeps things in equilibrium, protects the senior water rights, and maximizes the beneficial use.

Legal Presentations - Jim Lochhead / Anne Castle

Jim Lochhead provided a brief overview of the history of well regulations in the South Platte River basin. He reported that his role on the Task Force is to provide legal input, experience and guidance to the Task Force members. He stated that the briefing paper that was provided in the notebooks and also

available on the website provides good overview, history and background of well regulation in the South Platte Basin. He stated that the issue of well regulations in the South Platte Basin is way ahead of where other states are in the West. Most states do not even have their adjudications completed. Colorado is fortunate by virtue of the 1969 Act and adjudication of water rights, plans for augmentation, and has tools in place to achieve integration of surface and ground water.

Anne Castle provided the potential issues that the Task Force may want to consider or identify in the course of their deliberations. These issues are outlined in the briefing document. She reiterated that the mission of the Task Force is to explore possible options for relief to ground water users without injuring senior ground water users. She stated that most of the wells have been pumping for over 30 years and that shutting the wells down has a significant impact on the economy.

Mr. Sherman asked the Task Force members to let Dick Wolfe know of other issues for the next meeting. Mr. Hal Simpson suggested a briefing on the Three States Agreement. In addition, a suggestion was made to identify new or expansion of storage opportunities, how much water is available to store and where would it come from.

Task Force business

Mr. Sherman proposed additional meeting dates for the remainder of the summer. The goal is to provide recommendations to the Legislative Interim Water Committee by September. The next public meeting is July 16 in Sterling. Other future meetings are scheduled for July 27, August 13, August 27, and September 6, which will be held in Denver.



Public Presentations

Twenty-four people registered to speak. Ten minutes were allowed for each presentation and the presenters were asked to focus on issues and facts on the wells along the South Platte and the relationship to surface water users. The Task Force is not dealing with compact or other basin issues. The function of the Task Force is to listen to what the public has to say and come up with recommendations to resolve issues facing the South Platte well users and senior water rights. Some of the presenters provided handouts which will be posted on the Task Force webpage. The following people from the audience addressed the Task Force:

Former Senator Fred Anderson – Recognize that the senior appropriator has to be protected from injury. He referenced Morton Bittinger's 1968 report. Senate Bill 81, the water rights determination act, was introduced. He urged the Task Force to look closely at the approximately 10 million acre-feet of water in storage in the South Platte River alluvial aquifers and recommended that the Task Force work out something that recognizes this and works towards an integrated type of use. When considering the economic impact and well users, consider depletion requirements to all years prior to 1974. Recognize that there is flexibility in the system. Emphasized that one thing that has not taken place in the last 40 years is major reservoir construction.

Robert Samples – Third generation water commissioner, 1967 to 1988. He reiterated Mr. Anderson's comments and what they wanted to do was impossible in the 1969 Act. Experienced a drought period during 1977 at which time the most senior ditches were in operation and he curtailed the senior ditches. He suggested to the well owners to obtain alternate points of diversion for their wells. Suggested adding six words to the 1969 act - change the word "may" to "shall". The State Engineer Office has the authority to make due diligence to divert water, then there is no call in winter or summer. He made reference to his June 29 document which he provided to the Task Force members.

John Akolt – Attorney representing the Farmers Irrigation and Reservoir Company, predominantly a surface water right system. The group of farmers served by FRICO system is one of the larger single blocks of agricultural systems in Weld County. Well depletions have continued after pumping has ceased. They will be out of priority from now through the rest of the summer as their farmers are water-short and cut off their priority right. He wants the panel to note that there is no excess water that has not already been diverted and put to beneficial use in the South Platte system. They do not get the right to divert or deplete out of priority. They do not support actions or management plans that take water from existing seniors and give to junior priorities. The downstream senior rights are the lifeblood of the South Platte. Return flows have to be maintained and anything that interferes with return flows impacts the system because they are junior. They cannot take water rights away from seniors who are equally dependent on the same flow. The South Platte is already sufficiently allocated. The appropriation system serves a function and serves it well. Asked that the Task Force take into account that there is no access water in the river and it will have an impact on future surface users.

Steven Janssen – Attorney for Henrylyn Irrigation District. Actual water entities in the business of diverting tangible natural resource that is not available, they are always protecting their water rights and attempting to satisfy existing demands. They are a junior/senior water right and do not receive their full supply, there is no ability for them to give extra water to their neighbors. They

are willing to cooperate with their neighbors as long as the flow to their headgate is not reduced. He urged the Task Force to consider in their deliberations any impact on the junior surface right users such as Henrylyn. They are willing to cooperate. He referred to the Gentleman's agreement. The downstream reservoirs are subject to the same seepage and evaporation losses as everyone else and they should delay filling reservoirs to minimize losses by seepage and evaporation losses. If they allow for flexible administration, it will result in someone receiving selective benefit. Recommended to stay with the priority system and not allow one group over another take advantage of the administrative authority of the State Engineer. He stated that storage is the answer; storage in the Lost Creek basin, recharge in the Box Elder and Bebee Draw. Concluded by saying that you cannot make water all tributary water; adequate storage is imperative; priority systems provide certainty to invest and allocate the precious resource; and a conservation effort is to take water available in high flows and make it available in low flows.

John Monheiser - Harmony Ditch Company, has 26 shareholders and covers 2,300 acres, all surface water rights. They have a 1895 right and a 1965 well can pump from the river and take their water. The solution is in the priority system.

Robert Longenbaugh - Has 47 years of ground water experience. The impact of well pumping on surface water rights has been with us for over 40 years. He referenced Circular 28, Bitteringer's report, and Rule 6 of the compact. The drought of 2001-02 showed him the importance of pumping. The South Platte River aquifer was still full in 2002 and 2003 and urged the Task Force to figure out how to draw ground water to maximize the needs of the citizens of the state of Colorado. His studies show that those declines due to pumping do not carry over from year to year because it is dominated by surface diversions. Infrastructure changes have reduced return flows: lining of canals and pipelines decreases seepage losses; capture of sewage effluent from transmountain diversions; increase in phreatophyte consumptive use; endangered species requires more water to be delivered downstream; improved farm irrigation efficiencies have reduced deep percolation. His recommendation is flexibility of water administration and return to no calls on the river, manage total resource. Mr. Longenbaugh provided handouts to the Task Force.

Ken Bollers - Farmer and president of Henrylyn District. He stated that Henrylyn District has 300 owners and they pay \$600 per year in assessments. Storage rights are junior to several reservoirs including the South Platte. Depletions are not returned to the river, they are called out by senior rights. The Henrylyn District paid \$20 million in assessments to maintain and protect their water right, they followed the rules of the priority system. The challenge for the panel is how to help the wells without affecting the priority system and stop attacking legitimate senior water rights.

Bill Jerke - South Platte Roundtable Chairman, IBCC, Weld County Commissioner, surface right owner, and well owner. Reported on the projects he's involved with on the South Platte Roundtable and as Weld County Commissioner. He does not want the committee to consider options that would injure senior rights. He recommended allowing farms with large amount of surface rights to use wells in very nominal amounts without augmentation. He stated that 90% of the water used for germination in the spring goes back into the alluvium. Suggested that there be incentives for recharge.

John Meininger – Represents the Well Users Defense Committee. Agreed with Senator Anderson's testimony. Asked that the Task Force not lose focus that there is a serious element that property rights have been impacted by change of law and administration in the last six years, and hopes the focus of the Task Force's study is have the consequences of the changes of law and administration looked at to determine if they are acceptable and can they be justified. Is the amount of augmentation water now required from pumpers under decrees in 2001 and 2003 the correct amount? Can it be justified to curtail this many wells? Analyze the senior rights and preserve the rights of pumpers at the same time. The law was written to do what it did for 30 years.

Tim Buchanan – Referred to the priority system and stated that there has been no change in the law. There is a group who failed to properly plan for the future or situations where their water supply will be adequate. Should people who have properly planned be penalized? He has worked with Central and GASP to put together a water plan. He made reference to Senate Bill 73, get into court, get into compliance. Since April 2003, of over 4300 wells in the basin, only 2000 wells have augmentation plans and have developed a proper procedure for accounting for depletions and replacing depletions. None of those 2000 wells went to trial. He suggested that panel not deviate from the priority system as it will have ramifications and added that the action that needs to occur is to continue to recharge.

Dave Briedenbach – Representing North Sterling Irrigation Districts, believes that the State Engineer's responsibility is to administer wells as they are decreed in the court of law.

David Hernandez – Fourth generation farmer in the North Sterling Irrigation District. They ended up with 80% of their decreed rights; he abandoned 938 acres out of those years. They have a senior water right and they are affected.

Glen Murray – Third generation farmer, south of Brighton, has surface rights; post-pumping depletions have not been looked at close enough. The South Platte River has been over-appropriated for the last 100 years. Who pays, how much do they pay and who gets the benefit? What is the intent of different laws

and taxes and the fairness of this? He has a flood irrigation system and he gets penalized for every drop of water that comes out of that well. The City requires a certain number of trees per home.

Derek Pope – Representing Pope Farms Produce in Wiggins, the state is losing more money by cutting agriculture; they lost their entire operation in Wiggins and moved to Greeley.

Gene Kammersell – Stated that the fact that has been overlooked is post-pumping depletions; the aquifer heals itself. He stated that there are over 10 million acre-feet in the South Platte alluvial aquifers, and compared it to standing on five Lake McConaughys. He grows trees, has 30 acres, his well has been curtailed to three days of pumping for the entire year and has \$2.5 million trees that are severely burned. His ground needs to be dewatered because the aquifer is coming up. His solution is to return the management of the river to science. Envy and greed in water court, not the law, is trumping common sense and science. Urged the Task Force to put control back to scientists who know what they are talking about and know what's going on.

Andy Jones – Attorney with Lind, Lawrence & Ottenhoff in Greeley; he represents the most senior ditch companies on the South Platte; appeared as a citizen today. According to CSU, damage is \$28 million. Need to fund a study, do a system-wide analysis. The issue in front of the Task Force is that water levels in much of the South Platte basin are unchanged. The wells lowered the water table and eliminated the phreatophytes. The study should compare the ground water levels and surface diversions before wells and after wells to show what impact the wells have had. This will show the impact of wells on surface flows. Recommendations: Encourage the conjunctive use of water; encourage surface water diverters to install ground water diversions; funding for additional recharge wells, recharge sites, and pipelines; increase State Engineer discretion, authorize rulemaking in the South Platte basin by the State Engineer; look at watershed management and management of non-beneficial phreatophytes; remove wells that are remote from the river (i.e., in Box Elder Creek, Badger Creek, Beaver Creek); don't neglect recreational and environmental interests; Water Court Reform, put together reform/relief package that includes immediate relief for well owners; identify process for determining sustainable yield. Mr. Jones provided a handout to the Task Force.

Wade Caster – North Wiggins, farms with family, owns surface rights, delivery of 4,000 acre-feet per year. Applied in Water Court for a decree. Half of his depletions have been replaced.

David Hill – Attorney; familiar with research and experiments by the Forest Service to increase water runoff by thinning of overgrown forest. The closely packed branches of the coniferous forest reduces water supply. Urged the panel

to consider the amendments of statutes to allow tree trimming under carefully controlled conditions to benefit the water supply and increase runoff by over 200,000 acre-feet in one year. Mr. Hill provided a letter to Task Force by e-mail.

Eric Eidsness – Water engineer. Obtain Federal funding for water storage projects (SWSI study). Suggested that the Governor take the same leadership role in the water area and corral Colorado's congressional delegation to support legislation to return lost tax dollars for water storage projects in Colorado.

Harry Spark – Third generation farmer, over 3,000 acres for vegetable production (potatoes and corn), involved in five augmentation plans, has over 40 irrigation wells in six different ditch systems. Pavement causes water to flow to stateline.

Ken Clark – Fort Lupton. Spoke on behalf of municipal suppliers using wells; public health issues when there is no running water. Crops are sacrificed when they are almost mature. Pay attention to secondary affects of decisions

Charles Sylvester – La Salle. Remembers when there was no water in the river. Stop reservoirs storing water out of priority. Most of the water goes into the aquifers. Let people who rightfully own water, use it. Portions of the river is so full of trees and trash that water will not flow.

Bill Coyle – Farmer on Box Elder Creek, wells are 67 miles from South Platte River and would not impact the river for 700 years but he may have to deal with the possibility of his wells being shut off.

Dorothy Phelps – Hopes that the Task Force will divert the crisis that was created by water managers.



Set Tasks for Next Meeting

- Contact Forest Service to present at future meeting (Dick Wolfe)
- Water Storage Project Options (Dick Wolfe)
- Three-States Agreement (Dick Wolfe)
- SWSI presentation (Dick Wolfe will check with Rick Brown)
- Removal of phreatophytes (Anne Castle)
- Rainwater harvesting (Anne Castle)

- Develop a list of ideas (and pros and cons) from the public comments and add to possible solutions
- Flow chart on water rights; briefing on call system (Dick Wolfe with Jim Hall)
- Briefing on State Engineer administration starting with the 1969 Act (Dick Wolfe with Jim Hall and Hal Simpson)
- Jim Hall provide presentation on how water is administered