



Upper Gunnison River Water Conservancy District

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April 25, 2023

Senator Dylan Roberts dylan.roberts.senate@coleg.gov
Senator Perry Will perry.will.senate@coleg.gov
Representative Julie McCluskie Julie.Mccluskie.house@coleg.gov
Representative Marc Catlin marc.catlin.house@coleg.gov

Re: Senate Bill 23-295

Senators and Representatives:

I am writing to you as sponsors of SB 23-295 on behalf of the Board of Directors of the Upper Gunnison River Water Conservancy District and the water users who are our constituents. The Gunnison River is the largest tributary of the Colorado River in Colorado, and our economy and way of life are almost totally dependent on water-related activities, including agriculture, fishing, boating, and skiing. Water is also critical to our environment. As such, we are keenly aware of the crises facing the Colorado River Basin and the challenges faced by the State of Colorado in addressing interstate water-related issues.

We very much appreciate that the Colorado General Assembly has taken an increased interest in Colorado River matters and wants to create legislation that will support and defend Colorado's water resources. We do not believe, however, that SB 23-295, as introduced, is a helpful contribution to protecting Colorado's water users. The task force is not sufficiently inclusive. Any legislation related to the Colorado River affects many more stakeholders than are represented on this panel. We should, perhaps, be comfortable with a task force heavily weighted toward the West Slope. Still, we feel that excluding others will intensify the conflict between East and West and make any legislation proposed by the task force divisive and difficult to enact. More than 90% of water use in the Upper Gunnison Basin is used by agriculture, and we do not believe that agriculture is adequately represented or that the diversity of West Slope agriculture is respected.

In addition, the bill essentially directs the task force to recommend some form of a demand management program – voluntary, compensated, temporary reduction in consumptive use. This is a waste of everyone's time, including yours. Despite years of effort enforced by the Upper

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Division States' commitment to attempt to develop such a program and federal legislation to protect storage of conserved water, no program has been suggested that satisfies anyone involved. The obstacles have proven insurmountable in Colorado. Nor has there been any demonstration that such a program could provide enough conserved consumptive use to provide any meaningful protection in the event of imminent Colorado River administration. Pilot programs have yielded very little water despite the expenditure of millions of dollars. The Upper Gunnison District has consistently opposed demand management, and our water users have said emphatically that demand management in any form would not succeed in the Upper Gunnison Basin.

What is worse, creating a demand management program indicates that Colorado is comfortable with reducing our consumptive use to send more water downstream when we know that the principal cause of the current crisis is overuse in the Lower Basin despite drying hydrology. Remember that the Colorado River Compact states that "The States of the Upper Division *will not cause* the flow of the River at Lee Ferry to be depleted . . ." Are we willing to concede that water use in Colorado is the cause of diminishing average flow at Lee Ferry and thus should reduce consumptive use? At the very least, the task force's mission should include proposals that encompass broader solutions.

While we respect the urgency you feel to address these issues, rushing this legislation without adequate input from all stakeholders in the Colorado River will create more problems than it solves. As introduced, this bill is divisive rather than constructive. Coloradans cannot be divided on these matters because it weakens our position with the other basin states, both upper and lower. We urge you to pause and take the time to carefully develop legislation that will accomplish your goals regarding the Colorado River – goals we all share.

If you elect to proceed with this bill, we submit with this letter some specific suggestions for additional language in the bill. Thank you for taking the time to consider our comments, and thank you for your service to Colorado.

Sincerely,



John H. McClow, General Counsel

Cc: Senator Jeff Bridges jeff.bridges.senate@coleg.gov
Senator Byron Pelton byron.pelton.senate@coleg.gov
Senator Janice Rich janicerichsd7@gmail.com
Representative Richard Holtorf richard.holtorf.house@coleg.gov

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Representative Meghan Lukens meghan.lukens.house@coleg.gov
Representative Karen McCormick karen.mccormick.house@coleg.gov
Representative Barbara McLachlan barbara.mclachlan.house@coleg.gov
Representative Matt Soper matthew.soper.house@coleg.gov
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Colorado Water Congress State Affairs cwesa@cowatercongress.org

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SPECIFIC COMMENTS AND SUGGESTIONS FOR SB 23-295 AS INTRODUCED

Earlier drafts of the bill provided that the Attorney General or his designee would be a member of the Task Force. This provision must be restored. It is inevitable that the “additional tools” recommended by the Task Force will interact, or perhaps conflict, with the Law of the Colorado River, Colorado’s Constitution, and Colorado’s water laws. The state’s chief legal officer must be consulted.

At page 7, lines 1-6: Delete. These roles and obligations are adequately defined in Sections 37-46-102 and 37-47-102. If that language is retained, add:

Section (1) at page 3, following line 9, add:

“COMMISSIONER” MEANS THE COMMISSIONER APPOINTED BY THE GOVERNOR PURSUANT TO SECTION 37-60-109 TO REPRESENT THE STATE OF COLORADO IN INTERSTATE WATER MATTERS.

At page 5, following line 24, add:

MEMBERS OF THE TASK FORCE APPOINTED PURSUANT TO SECTIONS (2)(a)VII(B), (2)(a)VII(C), (2)(a)VIII(B), (2)(a)VIII(C), (2)(a)VIII(D), (2)(a)IX, (2)(a)X AND DESIGNATED PURSUANT TO SECTION (3)(d)(III) MAY NOT BE MEMBERS OF THE STAFF OR BOARD OF DIRECTORS OF THE COLORADO RIVER WATER CONSERVATION DISTRICT OR THE SOUTHWESTERN WATER CONSERVATION DISTRICT.

At page 8, line 6, add:

AND MAINTAINING THE AUTHORITY OF THE COMMISSIONER.

In addition:

At page 6, line 11, add:

. . . BY A TWO-THIRDS MAJORITY VOTE.

At page 6, following line 11, add:

ALL MEETINGS OF THE TASK FORCE SHALL BE SUBJECT TO THE COLORADO OPEN MEETINGS LAW SET FORTH IN SECTION 24-6-402.