



HOUSE JOINT RESOLUTION 03-1046

BY REPRESENTATIVES Hoppe, Brophy, Larson, Smith, Spradley, Young, Cloer, Crane, Fairbank, Fritz, Hall, Harvey, Hodge, King, Lee, McCluskey, Miller, Rhodes, Rippy, Sinclair, Stafford, White, Wiens, Williams S., and Williams T.; **also SENATORS** Isgar, Chlouber, Entz, Taylor, Johnson S., Kester, Lamborn, Owen, and Teck.

**CONCERNING UNITED STATES FOREST SERVICE
TREATMENT OF WATER RIGHTS ON NATIONAL FOREST
LANDS IN COLORADO.**

WHEREAS, The United States Department of Agriculture Forest Service recently filed errata to the 1997 revision of the Arapaho-Roosevelt National Forest Management Plan that for the first time includes direction to impose bypass flows for scenic, aesthetic, and recreational purposes; and

WHEREAS, The Forest Service recently asserted the right to impose a bypass flow requirement upon the owner of an existing water supply facility in the San Juan National Forest; and

WHEREAS, At a May 22, 2001, hearing of the House Resources Subcommittee on Forests and Forest Health exploring the legality and efficacy of federal bypass flows, Randle Phillips, Deputy Chief for Program and Legislation, testified that the Forest Service would follow "the principles of the Madigan letter", a policy that promotes collaboration with state and local water users to protect minimum flows of streams and rivers; and

WHEREAS, The White River National Forest published its Draft Forest Management Plan in 1999 that included a direction to impose bypass flows on existing water infrastructure upon permit renewal; and

WHEREAS, The White River National Forest's Draft Forest Management Plan garnered a record number of comment letters that were prompted in part because of the plan's bypass flow reference; and

WHEREAS, The Federal Water Rights Task Force created pursuant to section 389(d)(3) of P.L. 104-127 concluded Congress did not delegate to the U.S. Forest Service the authority necessary to force water users to relinquish part of their existing water supply to the United States as a condition of permit renewals; and

WHEREAS, Colorado law vests exclusive authority to appropriate instream flows for the protection of the natural environment in the Colorado Water Conservation Board; and

WHEREAS, Colorado law allows the United States Department of Agriculture to cooperate with the Water Conservation Board to protect instream flows; and

WHEREAS, The Forest Service instead has decided to obtain water under disputed permitting authorities; and

WHEREAS, These recent actions by the Forest Service only further inflame a federal-state relationship that has been strained over this issue; and

WHEREAS, The Forest Service's purported goal in pursuing bypass flows from existing water users can be accomplished through the state program; and

WHEREAS, A bypass flow permit requirement does not constitute a water right under Colorado water law; and

WHEREAS, Water bypassed pursuant to a bypass permit condition can be and often is legally diverted by a downstream junior water user before the water even reaches the stretch of stream intended to be benefitted by the bypassed water; and

WHEREAS, Congress has a long-standing policy of deference to state water allocation systems and Colorado has made an effort to promote state-federal cooperation in the previously contentious water rights arena; and

WHEREAS, Each western state has developed comprehensive systems for the appropriation, use, and distribution of water tailored to its unique physiologic, hydrologic, and climatic conditions found within that state; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-fourth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That we, the members of the General Assembly, do hereby request that the Forest Service discontinue its practice of imposing bypass flow conditions on existing water infrastructure on National Forest lands.

(2) That we do hereby request that the Secretary of the Department of Agriculture reinstate the 1992 "Madigan Letter", which was written to then Colorado Senator Hank Brown clarifying that water-related permits on National Forest lands will not be conditioned with bypass flow requirements.

(3) That the Forest Service seek any desired protection for instream flows through the Colorado Water Conservation Board in conformance with Colorado law for any stream flows that it believes necessary to fulfill the purposes of the forest.

(4) That the Congress consider amending the Land and Water Conservation Fund to establish grants to states with instream flow programs. Such grants should be used to acquire water rights from willing sellers so that the states, in consultation with the Secretary of Agriculture, may protect instream values on National Forest lands.

Be It Further Resolved, That official copies of this Joint Resolution be transmitted to the Honorable George W. Bush, President of the United States, the Secretary of the United States Department of Agriculture, and the Colorado Congressional Delegation.

Lola Spradley
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John Andrews
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Mona Heustis
SECRETARY OF
THE SENATE