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August 11, 2014

Comments on: Colorado Water Plan
Arkansas River Basin Implementation Plan, Chapter 5

Comments by: Pikes Peak Regional Water Authority

The Pikes Peak Regional Water Authority consists of El Paso County and nine municipal and special district water utilities in the county outside of Colorado Springs. Most of the Arkansas basin water supply gap is projected in the areas served by PPRWA members. This includes rapidly growing areas in the southern part of the county (Fountain, Security), and ground water-dependent areas of the northern and eastern parts of the county (Cherokee Metro District, Monument, Woodmoor, Palmer Lake, Forest Lakes Metro District, Donala WSD). Most potential sources of renewable water for PPRWA's members will require transporting water from some distance away. Project permitting is a critical process for PPRWA's members.

PPRWA endorses the comments of the South Metro Water Supply Authority on Colorado's Water Plan and its own (Metro Roundtable) Implementation Plan, a copy of which is attached. PPRWA joins all of South Metro's comments. We would highlight the importance to all permit applicants of:

- Early engagement by all state permitting agencies. The "race to the back," where every agency wants to be the last to approve a project, hinders and delays action to address Colorado's water supply gap, creating costly economic inefficiencies borne by the citizens of the State. Early identification of issues is the best path to early resolution. Springing new issues on the applicant late in a multi-permit process smacks of gamesmanship, and is one of the great inefficiencies of the permitting process.
- Allowing the applicant to fund state reviews by independent contractors where the state lacks resources or expertise, with appropriate safeguards to assure objectivity.



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The Pikes Peak Regional Water Authority further suggests the following:

The various permitting and regulatory processes for a water project create delays and run up expenses due in part to the “need” for overlapping analyses and duplicate studies of similar impacts, all with slightly different focus depending on the agency involved. For the PPRWA membership, which is primarily smaller quasi municipal water providers who make up much of the Arkansas Basin M&I gap, the major risk of inefficiency and additional transaction costs arise from the current process being latent with obstacles and overlapping reviews and authorities. For smaller M&I providers, these obstacles are often too large, so users avoid addressing the gap and turn back to additional non-renewable Denver Basin projects that buy a little more time.

- Coordination and Consolidation of Criteria required for State Permitting
- Common Information and Analyses for all State permits.
- Possibly with simultaneous filing with all state and local permitting or approval agencies

State permits and approvals for a water project typically include the Fish and Wildlife Mitigation Plan (Parks and Wildlife Commission and Colorado Water Conservation Board/CRS §37-60-122.2), 401 Certificate (Water Quality Control Division/CRS §25-8-302(f)), and where applicable, “1041 Permit” (Municipalities and Counties/CRS §24-65.1-101, *et seq.*). These are typically obtained with or shortly after federal environmental review under NEPA.

Colorado should require that its agencies base their reviews on a common set of data and analyses, relying on and not duplicating those analyses developed for the associated federal environmental review. Where there is no associated federal environmental review, all state agencies, including municipalities and counties, should rely on a single set of reports and analyses, to avoid duplication of time and expense creating new analyses of related environmental and land-use impacts. If there is a study, exhibit, etc. that has been filed with another permit application and is in the public domain, is relevant and timely for the subject matter, the applicant should be able to use and incorporate it into other permit applications.

- Eliminate Overlapping State Regulatory Requirements.

Areas and activities of state interest are regulated by both departments of state government and by counties and municipalities. There is substantial overlap in the matters addressed by these different state agencies, often resulting in duplicative processes and requirements, and at times conflicting conditions of approval.

Where the state has adopted a fish and wildlife mitigation plan as the official state position on the mitigation actions required of the applicant, other state agencies, including municipalities, ground water management districts, and counties, should rely on the official state



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position and not require additional studies or impose new or different conditions for fish and wildlife mitigation.

Where the state has issued a 401 certificate, certifying that a project will not violate water quality standards, with or without conditions, that should be the official state position on water quality impacts, and other state agencies, including municipalities, counties and groundwater management districts, should not require additional studies or impose new or different water quality conditions.

Where the water court has imposed terms and conditions to prevent injury to water rights, all state agencies, including municipalities and counties, should not require additional studies or impose new or different conditions on water rights diversions, storage, and use.

This concept could be expanded to have state approvals follow the federal requirements for the project within the areas of impact/mitigation addressed by federal processes, without duplicating those requirements at the state levels.

State legislation may be required, though some changes can likely be made by the executive branch.

In order to initiate the suggested permitting process changes, the PPRWA recommends that the Governor task the executive directors of the Department of Natural Resources, Department of Public Health & Environment and Department of Local Affairs to develop a joint plan to establish a coordinated and more efficient permitting process to become effective with the completion of the Statewide Water Plan, incorporating the suggestions above. The working group should also include representatives of county and municipal governments, either within the larger group or as a sub-group, to address local government permitting procedures. The working group should identify which improvements can be implemented by the executive branch, and which require legislation.

It is further recommended that the executive directors prepare an accompanying plan to establish a permanent clearinghouse that would assume the oversight for all of the State permitting requirements to ensure that the streamlined permitting process is utilized to its fullest extent.

Finally the PPRWA recommends that the clearinghouse be empowered to interact with federal permitting agencies as an ombudsman for the entities that need federal approval of projects.

The timely and full completion of IPP's is a critical pillar of the Statewide Water Plan. It is imperative that those IPP's not become bogged down in costly, duplicative and inefficient permitting procedures. Beyond IPPs, as Colorado addresses the basins' gaps, permitting



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inefficiencies will only be magnified. Permitting need not be a gauntlet. Improving the process is within our reach.

We hope to further communicate with CWCB on these comments as the State Water Plan draft and BIPs develop into firm policy.

Best Regards,

A handwritten signature in black ink, appearing to read "Sean P. Chambers".

Sean Chambers
President