



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

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May 3, 2007

Mr. Don Ament  
c/o Mr. Ted Kowalski  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, Colorado 80203

Mr. Alan Berryman  
Northern Colorado Water Conservancy District  
220 Water Avenue  
Berthoud, Colorado 80513

Mr. Kevin Urie/SPWRAP  
Denver Water Department  
1600 West 12th Avenue  
Denver, Colorado 80204

SUBJECT: RECOVERY AGREEMENTS IN COLORADO AND THE PLATTE RIVER  
RECOVERY IMPLEMENTATION PROGRAM

*Don, Ted, Alan, Kevin*  
Dear Messrs. Ament, Kowalski, Berryman, and Urie:

I am writing to follow-up on my April 20, 2007, phone discussion with Mr. Kowalski, where we discussed the use of Recovery Agreements in Colorado and their relationship to Colorado's Plan for Future Depletions and the Platte River Recovery Implementation Program (Program). The purpose of this letter is to document our mutual agreement concerning the use of Recovery Agreements and coordination procedures during Endangered Species Act (ESA) section 7 consultations involving Platte River water related activities. Mr. Kowalski represented the views of both the State of Colorado and the South Platte Water Related Activities Program, Inc. (SPWRAP).

The Recovery Agreement's primary purpose was to identify any requirements that a water user must complete with the State and/or SPWRAP in order to participate in Colorado's Plan, and if such requirements are not met, then the Fish and Wildlife Service (Service) may request reinitiation of consultation on that particular biological opinion which relied on Colorado's Plan as part of their ESA compliance. From our perspective, the ESA and implementing regulations provide that ability to the Service in such circumstances and, therefore, the Recovery Agreement only presents an additional and unneeded procedural step for the Water Users, State, SPWRAP coordinator, and the Service. I am pleased that we have agreed that a signed Recovery Agreement is not required by the State and SPWRAP as part of the streamlined consultation process.

Concerning membership in SPWRAP, as you know, the Program signatories have agreed on the distribution of Program costs between the States and the Department of the Interior. How those Program costs are distributed within an individual State is the prerogative of that State and their water users participating in the Program. Because Colorado's Program contributions are being financed jointly by the State of Colorado and water users through SPWRAP, we believe the distribution of costs and any necessary actions to participate in Colorado's Depletion Plan within Colorado is a decision to be made by Colorado and their water user representatives.

It is our understanding that Colorado and SPWRAP have determined that for existing and new water related activities in the South Platte River basin in Colorado, including the entirety of Larimer County, that joining SPWRAP is a requirement in order to complete any needed section 7 consultation and rely on the Program for ESA compliance. A certificate of SPWRAP membership should be provided with the biological assessment during consultation. Membership in SPWRAP is not needed for water-related activities conducted by Colorado State agencies, and for activities which are a Federal agency responsibility to address (i.e., "Federal depletions").

Given the differing nature of Colorado's Plan in the North Platte and South Platte basins and the anticipated effects during the first Program increment, we believe that a decision as to whether water users in the North Platte River basin in Colorado must join SPWRAP is an internal matter within Colorado and not a decision to be made by the Service. It is our understanding that the Jackson County Water Conservancy District has voluntarily joined SPWRAP and, therefore, Colorado has no SPWRAP membership requirements for individual Water Users in the North Platte River basin in Colorado (within Jackson County) to participate in the Program.

Thank you for the opportunity to provide our views. We look forward to working with you to provide any needed clarifications in Colorado's Plan for Future Depletions to specifically address this matter.

Sincerely,



Mark Butler  
Platte River Liaison

cc: Deb Freeman  
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