

**DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250**

January 19, 2005

**The Honorable Wayne Allard
United States Senate
525 Senate Dirksen Office Building
Washington DC 20510-1203

Dear Senator Allard:

Thank you for your leadership in representing the interests of water rights holder who operate water facilities on and adjacent to National Forest system lands. We have worked together many times to address water management issues, particularly with respect to the issue of bypass flows. As I have stated previously, the Department is committed to managing water resources on federal lands through cooperation with States, water users and other interested parties rather than through unilateral regulatory action on the part of the Forest Service.

The Department respects the authority of states to allocate water available for appropriation and recognizes its responsibility to cooperate with states, to the maximum extent possible, to manage water resources consistent with state law and avoiding unnecessary conflicts between state and federal law. Recently the Department and the Forest Service have taken several actions consistent with this position, including:

1. The Department's March 21, 2003 discretionary review of the appeal decision for the Arapaho and Roosevelt National Forests and Pawnee National Grassland (ARP) Revised Land and Resource Management Plan, which identified Four Cornerstones for managing water resources on National Forest System land. In summary these are:
 - The Department recognizes and respects the authority of states to allocate water available for appropriation and to manage water quality under the Clean Water Act.
 - The Department respects valid, existing water rights.
 - The Department is responsible for managing water uses on National Forest System lands consistent with both state and federal law.
 - The Department will manage water resources on National Forest System lands through cooperation with states, other federal agencies, Tribal governments, holders of valid water rights and the interested public, rather than through unilateral regulatory action by the Forest Service.
2. The April 16, 2004 Memorandum of Understanding between the Forest Service and Colorado on the management of water resources establishing a framework for

the cooperative management of water and water uses on National Forests in Colorado. Under this framework, the Forest Service has agreed to work cooperatively with Colorado on instream flow issues rather than take independent regulatory action affecting the exercise of water rights.

3. The Department's December 2, 2004 discretionary review of the appeal decisions for the White River National Forest Revised Land and Resource Management Plan. The decision instructed the Forest Service to remove the Water and Aquatic Resource Standards at issue in the plans and propose new standards that are consistent with the MOU between the Forest Service and Colorado and avoid conflict between federal and state law to the maximum extent possible.
4. The June 30, 2004 Forest Service directives for the issuance of Ditch Bill easements, which provide greater certainty to qualifying applicants, usually allowing them to continue to operate water diversions from Federal land without modification, except when required by State law or the requirements of the Endangered Species Act.

These recent actions have more effectively harmonized the application of state and federal laws to water resource management and greatly improved the working relationship between the Forest Service and Colorado. For example, under the April 16, 2004 Memorandum of Understanding between Colorado and the Forest Service, the state's existing instream flow protection program established under Section 37-92-102 of the Colorado Revised Statutes, in combination with opportunities for system optimization and voluntary flow agreements described by the Federal Water Rights Task Force created by the 1996 Farm Bill are adequate to protect and enhance instream values in Colorado's National Forests without the need for additional bypass flow requirements on water facility reauthorizations unless such requirements are necessary to satisfy the Endangered Species Act.

We remain prepared to work closely with you and your colleagues to further improve Departmental policies and, if necessary, seek improvements to existing law to more fully integrate federal management of water resources into the framework of state law, particularly in states, like Colorado, that have established instream flow programs.

Again thank you for your leadership in establishing sound policy for the management of water resources on National Forest System lands.

Sincerely,

/s/

MARK REY

Under Secretary

Natural Resources and Environment

****This letter was re-typed to have a legible copy available on this website.**