



Executive Director's Office 1313 Sherman Street, Room 718
Denver, CO 80203

September 6th, 2022

The Honorable Martin Heinrich
The Honorable Ben Ray Luján
United States Senate
261 Russell Building
Washington, DC, 20501

Re: S. 4236 Rio Grande Water Security Legislation

Dear Senator Heinrich and Senator Luján,

The State of Colorado and its agencies, including the Department of Natural Resources, the Office of the State Engineer, and the Colorado Water Conservation Board; joined by the Rio Grande Water Conservation District and the Southwestern Water Conservation District, collectively referred to as “Colorado”, wish to state our opposition to S. 4236 as written. Our particular concern is Title II, Rio Grande Water Security, which proposes an unprecedented role for multiple federal agencies in what is, by law, the three Rio Grande River basin states’ historical administration of the waters of the River.

It has been stated that the purpose of this legislation is to manage the river in a collaborative way. Colorado, New Mexico and Texas are legally charged with doing so under the Rio Grande River Compact, through the compact administration process. While we fully support federal and state coordination in natural resource management, and have a track record of doing just that, we will not support any weakening of our authority to administer water in Colorado, which this proposal threatens to do in the following three ways:

First, the proposed Legislation will directly conflict with the long-standing existing legal and regulatory mechanisms to manage water in the Rio Grande River basin within Colorado.

The State of Colorado has long had the exclusive authority to administer and distribute the waters of the state. Colorado exercises this authority through a system of prior appropriation to allocate water based on available water supply in a specific amount and at a particular time and place. For over a century, this system has been developed and refined and is the foundation that provides the citizens of Colorado the security and flexibility that is critical to meeting current and future needs. The federal government does not have a role in planning the use of, or the



administration of, water rights in Colorado. That function is reserved to the state.

Second, the proposed Legislation also establishes a precedent for application in other river basins like the Colorado River basin. Such legislation would directly conflict with the extensive body of laws and regulations that have been developed collaboratively by state and federal partners over a century and harm Colorado's significant interests there at a time of unprecedented challenges and transition.

Third, under then-Governor John Hickenlooper's leadership, Colorado developed a State Water Plan ("Colorado Plan"), published in 2015. And most recently, after an extensive and robust stakeholder engagement process, the Colorado Plan's first update was released on June 30, 2022, for public comment. The Colorado Plan is a highly effective grassroots effort that relies on the Colorado water community to identify and implement basin specific and statewide projects that provide multiple benefits to Colorado's diverse water users. Matters covered in the Colorado Plan are the same as those being proposed for study and implementation in this proposed Legislation which would undermine and conflict with the Colorado Plan. Colorado does not need or desire a top-down plan developed by federal agencies to guide a process over which those agencies have no authority.

In addition to the Colorado Plan, many of the issues to be addressed by the proposed Legislation have already been studied by Colorado, in cooperation with local and federal agencies and there has been a solution adopted, either by state or federal statute or regulation. Examples include, the Rio Grande Decision Support System, Closed Basin Project, PL 92-514, Oct. 20, 1972, Rio Grande Natural Area, PL 109-337, Oct. 12, 2006, Great Sand Dunes National Park and Preserve, PL 106-530, Sep. 24, 2004, the Habitat Conservation Plan for the Southwest Willow Flycatcher and the Yellow Billed Cuckoo, and Reserved Rights decree protecting in-stream flows within the entirety of the Rio Grande National Forest, announced March 15, 2000. As the list above illustrates, the federal agencies with an interest in water use in Colorado have participated throughout these processes in successful collaboration with the State.

Colorado does not wish to create any issues for its neighbors in New Mexico and Texas. However, Colorado, for its part, is significantly concerned about the harm the proposed Legislation could cause if it was extended to include Colorado and only requests that the proposed Legislation commences at the Colorado - New Mexico Stateline and relies on the required Rio Grande Compact deliveries from Colorado as an input at that point.

For the reasons above, Colorado respectfully recommends that the language of the proposed Legislation be amended to:

- a. exclude "Colorado" as a defined Basin State; and,
- b. Revise the term "Rio Grande Basin" so that it is defined as: "the mainstem of the Rio Grande from the Colorado/New Mexico state line to the mouth of the Rio Grande in Texas and any hydrologically connected groundwater, aquifers, and tributaries naturally connected to the Rio Grande Basin, as defined."



In conclusion, please understand that it is only Title II which we oppose. Thank you for the opportunity to provide input on the proposed Legislation. Discussion of our stated concerns and possible changes to remedy them is welcome at your earliest convenience. Please contact Kelly Romero-Heaney, Assistant Director of Water for Colorado's Department of Natural Resources (kelly.romero-heaney@state.co.us) with further questions or concerns.

Sincerely,



Dan Gibbs
Executive Director

CC:

Senator Michael Bennet
Senator John Hickenlooper
Senator Joe Manchin
Senator John Barrasso

