

South Platte River Forum – Keynote Address

Dec. 8, 2022

In Colorado, we are used to confronting challenges as opportunities. After all, Wallace Stegner, the famed Western writer, captured our spirit—it's impossible to be pessimistic in the West; it's the native land of hope. How we manage our water is a test of that ethos.

There are no two ways to put this: we face significant water scarcity challenges in Colorado and the West. That scarcity is driven, in part, by increasing demands as populations boom. And it's also driven by climate change, which is decreasing snowpack, changing runoff patterns, increasing evaporation, and drying soils.

One challenge we face is that the extent and exact impact of climate change on water is largely unknown. That uncertainty, coupled with coexistent unpredictability in rainfall and snowpack, can be destabilizing—making it difficult for farmers, ranchers, and even recreation companies to plan for the upcoming season. It is also quite possible that increased variable weather patterns are going to be our new normal, creating considerable pressure for us to create more adaptive and resilient systems for water management.

I want to recognize that increased uncertainty and unpredictability also threatens to destabilize municipal planning efforts. But those planning efforts are also now more important than ever, with an imperative of developing new and innovative strategies for water management. It is no exaggeration to say that the future success of Colorado will depend, in considerable part, on our ability to adapt to scarcity and reduce the uncertainty and unpredictability that come with it.

For starters, as I noted, we must be innovative and develop new tools and strategies to adapt to scarcity. And we must also continue and build on Colorado's rich history of collaboration. As we develop innovative and collaborative strategies for water management, we must continue to honor the rule of law, which will remain a foundation of how we manage water rights. And because scarcity will present different challenges in different river basins, our solutions must be tailored to those local challenges.

In my talk today, I want to celebrate your important work already dealing with some of these issues in the South Platte Basin, to talk about additional challenges we will face, and to begin a basin-wide conversation about how we, together, can rise to challenges we will face in the future.

A. The South Platte River Basin

The South Platte basin concentrates all the pressures facing Colorado. It's the most populous basin in the state and that population continues to grow. Between 2010 and 2020, population in Denver and other Front Range counties grew by more than 15%. Broomfield County, for example, grew at a staggering 32%¹. This growth cannot happen without access to water, and we need to ensure that the Front Range has sustainable plans for access to water.

The basin's contributions to the state's economy are diverse and substantial. In addition to Front Range cities and their economic activity, the South Platte River Basin also has the greatest concentration

¹ <https://www.cpr.org/2021/08/12/census-colorado-population-growth-front-range/>

of irrigated agricultural lands in Colorado.² And Weld County is the number one producer of oil and gas in the state. Indeed, 83% of all crude oil production and 51% of all natural gas production in Colorado comes from Weld County.³ Recreation, too, is important and many towns and cities along the South Platte River have begun investing in projects to improve the health of the river and the quality of recreation.

The basin's water supply is likewise diverse. The South Platte River basin benefits from more imported water than any other basin in Colorado. The annual native flow of the South Platte is around 1.4 million acre-feet.⁴ Another 500,000 acre-feet of water is imported each year from the Colorado, Arkansas, North Platte, and Laramie River basins, collectively.⁵ Quite literally, the health of our people and our economy depend on the health and well-being on these other river basins.

That dependence has driven collaboration and leadership throughout the state. Let me highlight a few examples of that work in practice.

B. Innovative Tools to Adapt to Scarcity

1. Municipal Conservation

Scarcity is already increasing the importance of finding innovative ways to reduce per-capita use of water in our towns and cities. Reducing per-capita use will continue to be important into the future. Thankfully, Front Range water providers are already leading conservation efforts in Colorado and around the West. In response to persistent and intensifying drought in the Colorado River basin, Denver Water, Aurora Water, and Pueblo Water—along with other municipal providers in California and Nevada—have committed to reduce turf grass by 30% in their service areas.⁶ To that end, the Aurora City Council already approved an ordinance limiting the use of cool weather turf in new developments and golf courses. And the Colorado General Assembly has dedicated \$2 million to incentivize turf grass replacement through the Colorado Water Conservation Board.

Another innovative way to reduce per-capita consumption is by reusing water. Many municipalities already recycle water for irrigation. And Aurora's Prairie Waters project allows indirect potable reuse through a combination of natural cleaning processes and state-of-the-art purification technology. Moreover, the Colorado Department of Public Health & Environment's new primary drinking water regulations will allow water suppliers to go even farther. In particular, the Water Quality Control Commission has adopted amendments to the Colorado Drinking Water Regulations to allow water providers in Colorado to develop direct potable reuse programs.

The new frontiers in water reuse mean that water from a wastewater treatment plant could be treated again and sent back to homes for cooking, cleaning, and drinking. Direct reuse reduces diversions from the streams and stretches our existing supplies. As part of getting more bang from our water buck, so to speak, it is important that Front Range cities investigate whether drinking water reuse

² Colorado's Water Plan (2015), at 3-2

³ https://www.weld.gov/files/sharedassets/public/departments/oil-and-gas-energy/documents/production-reports/oampg-production-report-2021/wc-oil-and-gas_oct.2022.pdf

⁴ Colorado's Water Plan (2015), at 3-2

⁵ *Id.*

⁶ <https://www.denverwater.org/sites/default/files/water-efficiency-mou.pdf>

might work for them—especially those whose water rights already allow them to reuse water to extinction because the water originates in another basin or by some other term of their decree.

2. Watershed Restoration

In addition to investing in technology to clean our drinking water, Front Range water providers are also investing heavily in the natural ecosystems of our headwaters. Healthy forest lands help ensure high-quality water is delivered to municipal intakes and reservoirs. Trees, shrubs, and grasses naturally filter precipitation before the water reaches streams and rivers. And healthy streams and rivers provide drought and flood resilience, increased water quality, wildfire resilience, and improved habitat. But forests and streams must be cared for over time to sustain these functions. Proper management is essential, and its benefits can stretch across multiple communities.

Consider, for example, how Northern Water is partnering with Grand County, the Colorado River District, and many more local bodies to restore the Willow Creek watershed. They are working to revegetate burn areas, control flooding, and protect remaining infrastructure in the area. Their work has an immediate benefit to Northern Water by reducing sediment flow into Grand Lake and reducing their treatment costs. But it also restores a community ravaged by fire and restores some of what was lost in the East Troublesome Fire of October 2020.⁷ Their efforts will go beyond simply restoring burn areas. The group has also received a grant to improve critical elements of the Colorado River's headwaters ecosystem.⁸ This work will go beyond burn areas to restore floodplains and diversify ecosystems. In return, those restored headwaters will improve drought and flood resilience, increase water quality, wildfire resilience, and improve habitat.

3. Permitting Reform

While we applaud these efforts to reduce per capita use and restore the health of our headwaters, they are not a silver bullet. We will need additional infrastructure to meet future demands for water. As we look at expanding existing projects or other forms of smart storage, I recognize that the prospect of getting the necessary permits looms large as a significant challenge. That's why I'm committed to helping reform the permitting structure in Colorado to streamline that process and ensure that Colorado can build the infrastructure it needs and do so in time to capture federal funding that is available.

The idea that "everyone gets their day in court" is important to me. But it's a shame when a group or individual holds out from a collaborative problem-solving process and then abuses the opportunity to litigate—or threaten litigation—in a manner that derails statewide or regionwide efforts to resolve difficult problems. By streamlining the permitting process, we can encourage greater participation earlier in the process and reduce the temptation of some to use the threat of litigation as a bargaining chip in what game theorists call the game of holdout. In short, there must be better ways to create incentives for all stakeholders to come to the table earlier to raise concerns, to work through issues in good faith, and create processes that incentivize constructive dialogue rather than being in the position of withholding cooperation and threatening a veto after failing to take advantage of a clear opportunity to come to the table and raise issues earlier.

⁷ <https://www.northernwater.org/GCWatershedRecovery>

⁸ <https://www.northernwater.org/Home/NewsArticle/d0c9fecd-0baa-4458-9ad8-cc638e2ac7b9>

C. Strategies to cope with increased pressures that result from scarcity:

In addition to pursuing innovative solutions, we will also need to be vigilant in guarding against shortcuts and bad solutions.

For starters, let's recognize that more water scarcity will increase water prices and could threaten to revive the sorts of buy and dry schemes that we've already seen in the past and that devastated communities. Indeed, the economics of water could even inspire new schemes. I stand ready to oppose any projects that would harm the foundation of a local community, allow for the hoarding of water without a legitimate use for it, or enable developers to profit from scarcity and playing their own sorts of holdout games.

Throughout my first term, I opposed plans pushed by investors to pipe water from the San Luis Valley to the Front Range. Colorado's Water Plan rejects "buy and dry" schemes like that. The Plan promises to support our agricultural communities, not destroy them wholesale. Providing sustainable water sources for the Front Range will take hard conversations and intergovernmental collaboration. But no solution to solve those needs should be done at the expense of our agricultural communities. During my second term, I will continue to oppose plans that come at the expense of others in our communities or attempt to skirt Colorado's system of appropriation and adjudication in Colorado's water courts.

We need to recognize that scarcity will increase public attention on water. And it might even drive leaders in other states to pursue ill-formulated plans in order to score political points. We must resist that urge and continue to work together on regional solutions that address local needs. We cannot let politics drive projects from the top down, like Nebraska has with its Perkins County Canal plan. As I have stated, that project can only be explained as a political undertaking, and I believe it won't ever come to pass.

That said, if Nebraska ultimately decides to build a Perkins County canal, we will ensure that the project is limited to exactly that which was negotiated in 1923 and nothing more. Nebraska cannot use its delay in pursuing the project, for example, to benefit itself—especially if that comes at any cost to Colorado landowners and water users. We won't be afraid to go to court on that issue—or any other one involving interstate water management issues—to protect Colorado's rights. Indeed, in this legislative session, I intend to, once again, ask for additional resources for our Interstate Water Unit so we are prepared for any potential litigation that might come our way.

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The original development of the Colorado River Compact is an inspiring story of Western collaboration and innovative problem-solving. An optimistic Coloradan, Delph Carpenter, was instrumental in forging that agreement, which was a far-sighted framework that protected Colorado's interests and placed limits on what the Lower Basin states—Arizona, California, and Nevada—could expect. We are now in a moment where those states need to start living within their means. As I have stated, we stand ready to work with them, sharing our knowledge and expertise, on the path forward.

We in Colorado need to continue to recognize that we are in a critical moment for how we can best manage this critical resource. The work around conservation, re-use, and investing in smart storage solutions must begin in earnest now. If we fail to invest our time and money in this work, we will pay an

extraordinary price down the road. This important work will remain a top priority for me as long as I continue to serve as your Attorney General. Thanks for your engagement and leadership.