

Committee on Resources, Subcommittee on Forests & Forest Health

[forests](#) - - Rep. Scott McInnis, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6205 - - (202) 225-0691

Subcommittee on Water & Power

[water](#) - - Rep. Ken Calvert, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6204 - - (202) 225-8331

Witness Statement

**Senator Wayne Allard
Statement to the United States House of Representatives
Subcommittee on Forests and Forest Health
Subcommittee on Water and Power
May 22, 2001
Oversight Hearing on Water Bypass Flows**

Thank you Chairman McInnis and Chairman Calvert for holding today's oversight hearing concerning the United States Forest Services' use of water bypass flows. I appreciate the opportunity to speak to you today on this important issue.

Many westerners believe that Colorado and the states, not Washington, should establish state water policy. We know that Colorado already has an effective in-stream flow program in place to protect Colorado rivers from future development. We believe that if the Forest Service wants to increase flows in rivers that cross National Forests, it should work with Colorado's and other states' in-stream programs and/or purchase additional water rights consistent with western water law.

Since approximately 1990, the United States Department of Agriculture, Forest Service, has attempted to use federal land use permitting authority to require that the owners of existing water supply facilities located on National Forest lands relinquish a part of the water supply that would otherwise be provided from these facilities. While this controversy originated in Colorado, information provided to a congressional Task Force convened in 1997 revealed that conflicts with the Forest Service exist in other states in the West, including Montana, Arizona, Idaho and Nevada.

To understand the bypass flow controversy it's important to realize that much of Colorado's municipal and agricultural water is stored in high-mountain reservoirs. Much of this water is released and diverted on or across Forest Service property.

While no one argues that the Forest Service has legitimate interests when considering new or future water projects, it is a different matter entirely to condition permit renewal on water forfeiture.

Water users in the Cache La Poudre basin with permits up for renewal negotiated a settlement with the Forest Service. This Joint Operating Agreement actually put much more water into more than 70 miles of Colorado's only scenic and wild river (in critical winter months) than the bypass flows considered by the Forest Service. The negotiated agreement was praised by everyone from the State of Colorado to the Denver Post. Yet it was immediately dragged into court by environmental groups which published pictures of less than one mile of the Poudre River that would not have been helped by the agreement.

At the federal level, bypass flow arguments became so heated that in 1992 then Secretary of Agriculture Ed Madigan issued a departmental directive codifying historical Forest Service policy against imposing bypass flows. This directive was secretly repealed in the fall of 1993 without public or congressional input. This policy change was not announced until nearly a year later by sheepish Forest Service personnel.

In the closing months of the Clinton Administration, the Forest Service once again announced its intent to require water "bypass flows" for existing water facilities. This issue is of great importance to the West, as bypass flow requirements are used to take water that is owned by cities and farmers without compensation, notwithstanding the fact that the Task Force found that Congress has not delegated this authority to the Forest Service.

Since the new administration has taken office, I have requested that the Secretary of Agriculture Ann Veneman reinstate the historical policy of the Department, that the Forest Service may not impose water "bypass flows" and direct that the Regions and the Office of the General Counsel follow this policy in all Forest Plans and other decisions. In addition, I along with Senator's Thomas, Enzi, Domenici and Crapo wrote to Attorney General John Ashcroft requesting that the historical policy be reinstated.

As you know, I have been involved with the debate over the attempts by the Forest Service to assert federal permitting authority over historical use for quite sometime now. The United States Congress has taken, and will continue to take an active role in monitoring how the Forest Service goes about obtaining water from Colorado water users. The Federal Water Rights Task Force was specific in its report that requiring water users to relinquish part of their existing water supply, or transferring of their water rights through the granting or renewal of federal permits is not included in the Forest Services' authority.

The real issue surrounding this debate is philosophical: Should the federal government or the state government control water resources in Colorado? As an avid fly fisherman I am convinced that the State of Colorado has protected our rivers and will continue to do so. That's why I so strongly oppose allowing the Forest Service to embark on this path.

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