

Wayne Allard

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SENATOR ALLARD SECURES AGREEMENT ON BYPASS FLOWS FROM U.S. FOREST SERVICE FOR COLORADO WATER USERS

U.S. Department of Agriculture agrees in letter to honor existing water rights, state law

WASHINGTON, D.C. – U.S. Senator Wayne Allard (R-Colorado) released a letter Wednesday that secures a pledge from the U.S. Department of Agriculture to recognize and uphold the interests of the holders of water-rights that are on or adjacent to national forests. The letter, sent to Senator Allard in January, recognizes for the first time that a bypass flow is not required by Colorado applicants in order to renew their special use permits with the Forest Service.

“This question remains of paramount importance to Colorado and the West,” Senator Allard said. “The Department of Agriculture has acknowledged, in writing, for the first time, the historic water rights of Colorado’s farmers, ranchers and municipalities that date back to the 19th century.”

The “Allard Letter” states that recent agreements between the state of Colorado and the U.S. Forest Service, as well as the state’s in-stream flow law and findings of the Federal Water Rights Task Force, are sufficient to meet Forest Service environmental needs, meaning that there is no longer a need to require bypass flows.

“This letter repudiates a policy under which the U.S. Forest Service was attempting to extort water rights from Colorado’s citizens by setting bypass requirements with neither consultation nor compensation,” Senator Allard said. “We have been fighting this fight since 1992, and finally the Department of Agriculture has agreed that the current mechanisms for protecting fish and minimum stream flows provided for by Colorado state law are sufficient.”

Senator Allard cited a letter from Mark Rey, Under Secretary of Agriculture for Natural Resources and the Environment, sent in response to years of inquiry from Senator Allard and other Colorado policymakers, who had reiterated the position that permits conditioned upon securing water bypass flows were an illegal taking and a violation of state and federal water law.

“Even though this letter is specific to our situation in Colorado, it is a significant landmark in the protection of state water law and private property rights,” Senator Allard said. “It provides farmers, ranchers, municipalities, water storage companies – and nearly 1,000 ditch-bill permit applicants whose applications are currently pending before the Forest Service in Colorado – with absolute assurances that the federal government will play by the rules and follow the law, just like everyone else, when it comes to obtaining water rights.”

The letter also endorses elements of a 1997 Federal Water Rights Task Force report, which found that Congress had not delegated to the U.S. Forest Service any authority to require farmers and cities to give up part of their existing water supply as a condition of the renewal of federal land use permits.

“This is a victory for every Coloradan who believes in local cooperation, collaboration and property rights,” Senator Allard said.

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