Reasonable Summary of Preliminary Opinion on a Proposal to Use Water Outside Wyoming

Purpose:

Pursuant to W.S. § 41-3-115, regarding applications for use of water outside the state, the Wyoming State Engineer's Office (SEO) seeks public comment pertaining to the export of storage water from Pathfinder Reservoir in conjunction with the Pathfinder Modification Project (PMP). Public comment on this proposal will be taken by Mr. Pat Tyrrell, Wyoming State Engineer, on December 12, 2008 in the Agricultural Learning Center in Casper, Wyoming, beginning at 1:00 p.m.

The SEO has received an application to export water from the Bureau of Reclamation, and has deemed that application to be complete and acceptable. The SEO has undertaken a review of the application and has prepared a preliminary analysis of it. Mr. Tyrrell's preliminary opinion is that the proposed project should be approved.

Among the factors considered in Mr. Tyrrell's review were: the amount of water proposed to be appropriated and the proposed uses; the amount of water available for appropriation from Pathfinder Reservoir and the natural characteristics of that source; the economic, social, environmental and other benefits to be derived by Wyoming from the proposed appropriation; the benefits to Wyoming by the use of the water within Wyoming that would be foregone by the proposed appropriation; the benefits presently and prospectively derived from the return flow of water in intrastate use which may be eliminated by the proposed out-of-state use; any injury to existing water rights of other appropriators that may result from the proposed use; whether the proposed use, if carried out, would promote or enhance the purposes and policies of Wyoming's water development plans and water resources policy, and whether the use would unreasonably interfere with other planned uses or developments for which a permit has been or may be issued; whether the proposed use will significantly impair Wyoming's interest and ability to preserve and conserve sufficient quantities of water for reasonably foreseeable consumptive uses and other legally recognized beneficial uses; whether the proposed use would adversely affect the quantity or quality of water available for domestic or municipal use; and whether, to the greatest extent possible, a correlation between surface water and groundwater has been determined, to avoid possible harmful effects of the proposed use on the supply of either. The SEO has also taken into account that nothing in W.S. § 41-3-115 is to be construed to interfere with Wyoming's obligations under the decree entered by the US Supreme Court in Nebraska v. Wyoming, 325 U.S. 589, 665 (1945), as modified and supplemented on June 15, 1953 in Nebraska v. Wyoming, 345 U.S. 981 (1953) and further modified on October 12, 2001 by Nebraska v. Wyoming, 534 U.S. 40 (2001). The PMP is a product of the foregoing litigation. The PMP is authorized by Appendix F – Amendment to the 1953 Order to Provide for the Modification of Pathfinder Reservoir to the Final Settlement Stipulation.

The present application is to allow the PMP to recapture 53,493 acre feet of reservoir storage space in the existing Pathfinder Reservoir now lost to accumulated sediment by raising the elevation of the existing spillway approximately 2.4 feet with the installation of an ogee crest. The resulting recaptured

or restored capacity, as set out under the PMP and as administered through two accounts (the "Environmental Account" and the "Wyoming Account"), would afford Wyoming the best alternative to: (1) resolve federal Endangered Species Act (ESA) issues; (2) provide a supplemental water supply for Wyoming municipalities; and (3) meet Wyoming's depletion replacement obligation under the Modified North Platte Decree.

To help resolve federal ESA issues, the states of Colorado, Wyoming and Nebraska and the Department of Interior together formed a unique partnership to develop a shared approach to managing the Platte River, called the Platte River Recovery Implementation Program (Program). One of Wyoming's contributions to the Program is to provide water to be used for fish, wildlife, and environmental purposes to develop habitat in Nebraska for four target species (interior least tern, whooping crane, piping plover and pallid sturgeon) listed as threatened or endangered under the ESA. This water contribution, along with Wyoming's monetary contribution, would help ensure that clearances required under the ESA are provided for existing and certain specific new water uses in Wyoming. The Wyoming Board of Control considered and approved a petition which would entail a change in use, at its meeting in Cheyenne on November 4, 2008.

Comment Procedures:

It is important that all interested and potentially affected persons or parties make their views known about this proposal to the Wyoming SEO. You may attend the public hearing on December 12 in Casper and make relevant verbal comments and/or submit written comments, data or other relevant information. The Hearing Officer may limit the length of time each person may speak at the public hearing, if necessary, so that all those who wish to speak will have that opportunity. Written comments, data, and relevant information will be accepted no later than January 2, 2009. All mailed comments must be postmarked no later than December 30, 2008 to be accepted for consideration by the State Engineer. Written comments, data, and relevant information should be submitted to:

Wyoming State Engineer
c/o Pathfinder Modification Project
122 W. 25th St.
Cheyenne, WY 82002

Public Hearing Announcement:

Friday December 12, 2008
1:00 PM – 4:00 PM

Agricultural Resource & Learning Center
2011 Fairgrounds Rd.
Casper, WY 82604

All interested parties are invited and encouraged to attend. Those attending are offered the opportunity to express their comments, data, and other relevant information about this project. Written comments may be presented at the hearing.

Sponsor: The Wyoming State Engineer's Office
Information: http://seo.state.wy.us/
Contact: Matt Hoobler, North Platte River Coordinator, Wyoming SEO
MHOOBL@seo.wyo.gov 307-777-7641

Further Information:

For further details concerning the proposed export of storage water in conjunction with the PMP, please visit: http://seo.state.wy.us/

The State Engineer requests that anyone requiring auxiliary aids for disabilities contact the SEO in advance by calling 307-777-7641 (mailing address: Herschler Building 4E, Cheyenne, WY 82002).

In case of inclement weather on the day of the scheduled public hearing, please contact Matt Hoobler at 307-777-7641 for information regarding any changes to the location, day or time of the hearing.