

#### Private Sector Strategies for Restoring Flows to Seasonally Dewatered Rivers in the Upper Green River Basin

Cory Toye Wyoming Water and Habitat Director

#### www.tu.org

### Wyoming Water and Habitat Program



**Protect:** Intact wilderness areas, pristine headwater streams and other undeveloped backcountry are quite literally the last refuges for many native trout and salmon. TU advocates for responsible use and continued protection of these last, best places.

Reconnect: Fish must be able to migrate away from floods, fires, drought and other disturbances. TU works to improve and increase flows, remove obsolete dams and diversions, and fix perched or broken culverts.

#### Restore: Even if we protected all the remaining

we protected all the remaining pristine land in perpetuity, it wouldn't be enough to sustain our fisheries. We must reclaim some of the land degraded by development and incompatible use. TU's grassroots volunteers donate thousands of hours every year to clean up their local streams and rivers.

Sustain: The next generation must know and care—about TU's work for it to endure. Through youth education and other outreach efforts. TU works to create a new generation of stewards for our coldwater rivers.

TU is a private, non profit organization with 150,000 members dedicated to conserving, protecting and restoring North America's coldwater fisheries and their watersheds

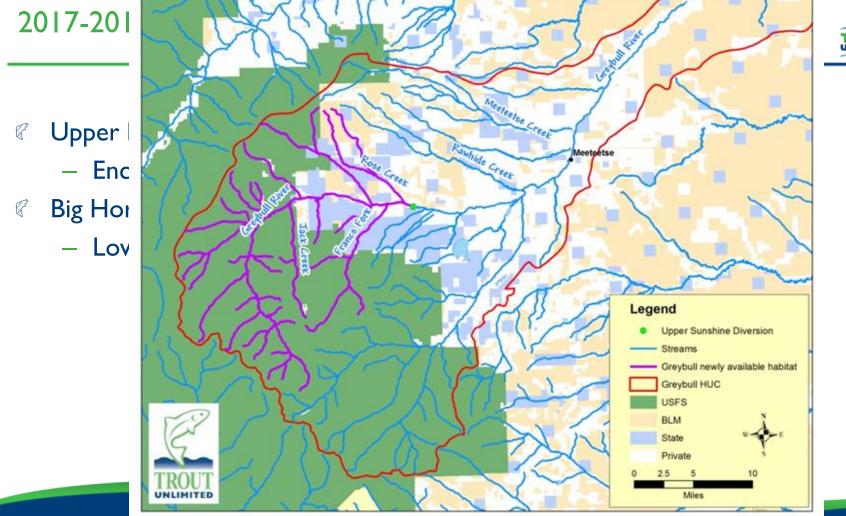




Freedom is a dirty shirt, The sun on my face and My shovel in the dirt Bruce Springsteen

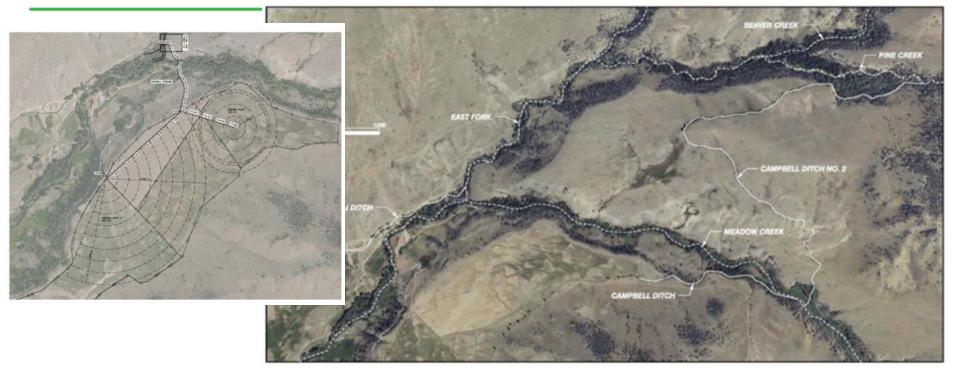






## 2017-2018 Wyoming Highlights







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#### Upper Green River Water Marketing The System Conservation Pilot Program in Wyoming



Prior Appropriation	Law of the land
Free River Doctrine	Prior Appropriation plus
Protection of conserved water past non participating head gates (shepherding)	Not possible under existing statutes
Instream Flow	<ul> <li>Success on public land in non-appropriated stream reaches.</li> <li>Difficult to use existing statute on private land</li> </ul>
Abandonment/Forfeiture	<ul> <li>five successive years of non use, and</li> <li>initiated by an affected water user who has a priority equal or junior to the right being abandoned</li> </ul>
Change of Use Statutes	Applicable only to other "consumptive" uses



#### Trout Unlimited started the Western Water Project in 1998.

# The Mission: Restore healthy stream flows and habitat in some of the West's best places





A Change of Use For Fishery Purposes can only take place after July 1.

Finding a system that doesn't take land out of production while still providing flow for fisheries during critical time periods.

Allows for incentive driven streamflow benefits.

transactions with landowners to provide late summer Recognizes the importance of early season in gation for late season return flows



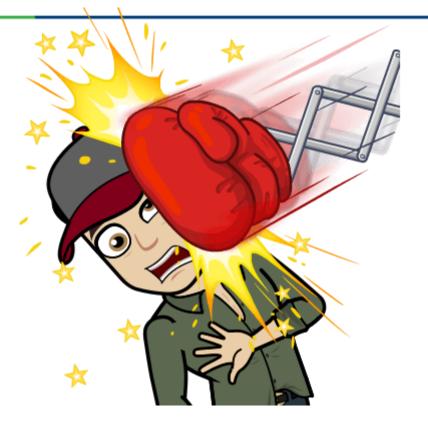
A water right is granted in perpetuity, the right is transferable so that it can move to higher uses in response to economic forces.

(Frank J. Trelease, Land and Water Law Review Vol. 1 No. 1, 4, 1996).

The theory behind this doctrine is that by permitting persons to carve out for themselves, private property rights from the public owned assets, each person will attempt to achieve the greatest possible benefit for himself, and the total result of these individual actions will tend to produce maximum welfare for the state or nation.

(Frank J. Trelease, Land and Water Law Review Vol. 1 No. 1, 4, 1996).







#### The Colorado River Drainage

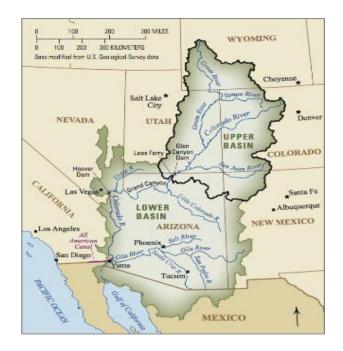




#### UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

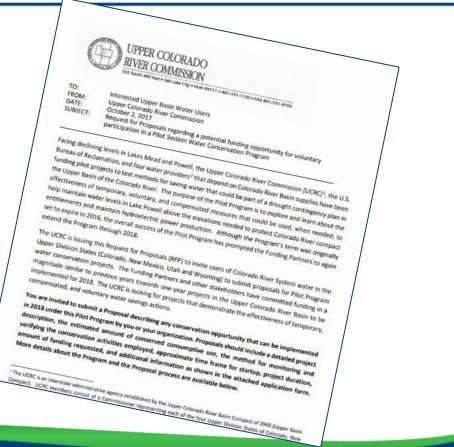
- The Upper Colorado River Commission (UCRC) is an interstate water administrative agency established by action of five state legislatures and Congress with the enactment of the 1948 Upper Colorado River Basin Compact.
- The Commission's role is to administer water from the Colorado River to the Upper Division States of Wyoming, Colorado, Utah and New Mexico, and
- Ensure water is released in accordance with the 1922 Colorado River Compact to the Lower Division States of Nevada, Arizona and California and to the Republic of Mexico.



### System Conservation Pilot Program (SCPP)



- Facing the ongoing drought in the Colorado River Basin and declining reservoir levels, the BoR and four municipal water providers that depend on the CO River are developing tools that could be part of a drought contingency plan – including the SCPP.
- The SCPP is designed to test on-theground, emergency water conservation opportunities:
  - Are there voluntary measures that could be used, when needed, to help maintain water levels in Lake Powell for CO River compact compliance and maintain hydropower generation?
- Originally a 2 year pilot program slated to end in 2016, the overall success of the program prompted funding partners to extend the program through 2018.



### SCPP and TU in Wyoming

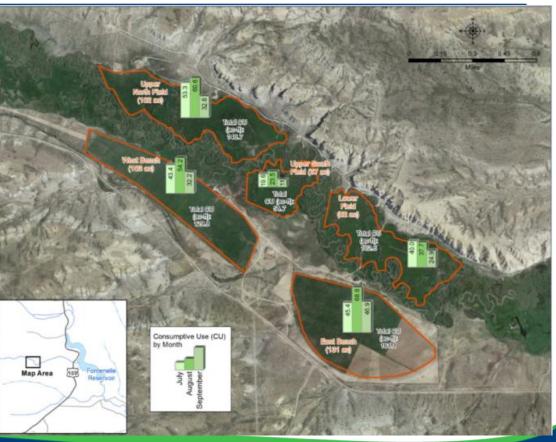




- The Wyoming State Engineers Office (SEO) approached TU to participate in the SCPP by soliciting the program to partners in the Upper Green.
- SEO offered technical assistance for completing applications, in particular, estimating consumptive use (CU) for each water conservation activity.
- Success of the early rounds of SCPP were due to relationships from previous TU project partnerships.
- Successful applicants helped recruit more members.



- 5 applications submitted
- 5 successful applications
- 2200 acres fallowed after July I
- 1644 AF of water conserved
- \$200/AF
- Total Cost = \$328,800.00





- 9 applications submitted (7 TU)
- 9 successful applications
- 7056 acres fallowed after July I
- 5117 AF of water conserved
- \$200/AF
- Total Cost = \$1,023,400.00

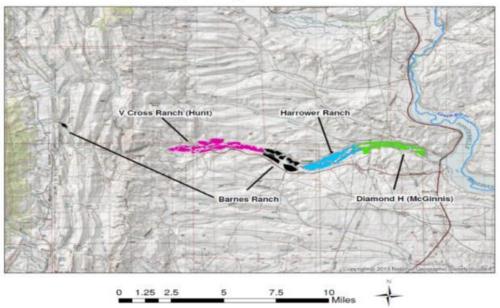




- 20 applications submitted (18TU)
  - 24,748.4 acres •
  - 21,080 AF ٠
  - \$5,138,860.00 requested in WY •
- 4 successful applications
  2836.2 acres fallowed after July I
  2744 AF of water conserved

  - \$190.00/AF •
  - Total Cost = \$521,360.00 •

#### 2017 Wyoming SCPP Locations



#### "The Colorado River is already fully used.

#### 2017 SCPP RFP started emphasizing shepherding

- Total requests for funding across the upper basin = \$7.5 million,
- Total funding available: \$1.8 million
- Off to DC!



#### A new way of thinking and doing business.

The Colorado River Ross 1,550 miles from its headwaters in the Rocky Mountains to the Gulf of California, delivering sater to some 36 million people for spricultural. industrial, and municipal needs as well as reporting a booming recreation economy and amazing fish and wildlife habetat. It's one of the hardest working rivers in the



BUT TODAT, the Colorado Basia is facing a host of challenges, including increased water demands from growing cities, a changing elimate of prolonged drought and reased sursepark, and eclining water levels in Loles Powell and Mead that if not checked, could trigger future water calls and conflict.

To meet these challenges and serure our some future the Bareau of Reclamation, several municipal utilities and other rise: stakeholders hundred an innovative pilot program-the System Conservation Pilot Program (SCPP)-to test the willingness of landowners, ranchers, municipalities and other water users to take part in voluntary, compensated reductions in water use.

arkets

future

OW

The good news: This market-based approach to water conservation shows great promise in helping the overtaxed Colorado River over)



In the second second



SCPP in the Upper Basin

ROUND (2016-2017) In 2015-2016, the SCPP onserved approximately 12,400 serv-feet (AF)\* of \$7.5 million ster with about 32 projects. The total value of

all applications submitt Roughly 75% of the water \$1.8 million ed through e split- or late-season fully stable for famir

achers and farmers irrigated for part but not all of the potential rigation/production seas amber of applicate The program new

In the 2016–2017 round, water areas submated 47 applications for SCIPP project, with a potential 20,000 serv-teet of water serings in Minumine dame.

Who does SCPP benefit? Agriculture producory and a

Fish and wildlife. by a ir that maintains healthy es and habitat as it m

CARRON CANAL. UT

ire into the

Forming in the high desert in Eastern Utak means we need to

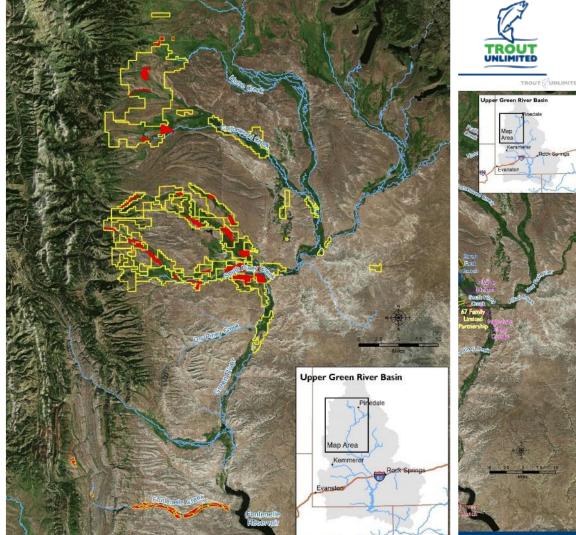
be smart with how we use our aster, Sriten anneration giver con a tool to said fientiality n our acter management." EVIN COTHER, KC AG LLC. PRICE BIVER, UTAM

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- 28 applications submitted by TU
- 28 applications approved
- 16,944.97 acres
- 16,714.88 AF conserved
- \$150.00/AF

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- Total Cost: \$2,168,832.00
- Four tributaries with 95-100% participat
  - Participating landowners repre
  - Limited application to ~600 ac
  - Tributary model for shepherdi
- TU acting as 3<sup>rd</sup> party to administer agree



#### Next Steps



- Let the market develop
  - Competition is a good thing
  - Create a predictable accounting system for both buyers and sellers
- Work with stakeholders towards a permanent water market
  - Longer term contracts with water right holders
  - Develop triggers to determine when the system needs water
- Learn from the 2018 field season and refine the 3<sup>rd</sup> party model
- The slow and humbling march towards legislation(?)

#### Legislative and Ot



#### State Engineer's Office

HERSCHLER BUILDING, 4-W CHEYENNE, WYOMING 82002 (307) 777-6150

5 May, 2017

MATTHEW H. MEAD GOVERNOR PATRICK T. TYRRELL STATE ENGINEER



• Explicit protection for

Consumptive us

Mr. Cory Toye, Director Wyoming Water Project – Trout Unlimited 220 N. 8th Street Lander. WY 82520

- First and foremost, any program must have the support of local landowners and water right holders. They are the key to any successful, long-term program.
- The program must be administered by a third-party. The Upper Colorado River Commission should be replaced with a more formal, targeted, management structure, tailored to the program.
- Any conservation program must be voluntary and operate in a manner that is consistent with Wyoming
  water law. It also cannot threaten, by its practices, underlying individual water rights.
- The program should be operated to compliment a basin-wide conservation program benefitting Wyoming and the Upper Basin's Drought Contingency Planning, and not as a stand-alone program. Wyoming's larger benefit is the system water saved.
- Any operational program must not threaten Wyoming's rights, obligations, or apportionments under the Colorado River and Upper Colorado River Basin Compacts.

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We thank you for your efforts.

Sincerel Patrick T. Tyrrell

Patrick T. Tyrrell State Engineer

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Surface Water (307) 777-6475 Ground Water (307) 777-6163 Board of Control (307) 777-6178



# Questions?

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