ST. VRAIN AND LEFT HAND WATER CONSERVANCY DISTRICT
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November 13, 2014

United States Senate
Committee on Finance
Washington, DC 20510-6200

RE: Testimony for Hearing on "Tax Relief after a Disaster: How Individuals, Small Businesses, and Communities Recover"

Dear Chairman Wyden:

In September, 2013, the Front Range of Colorado, from Colorado Springs to Fort Collins, received approximately 2 to 18 inches of rainfall in a seven day period. For an area that historically receives an **annual** average of 20 inches, this storm produced a 1 in 1,000 year precipitation event in some locations. Precipitation fell at elevations as high as 10,000 feet and at lower elevations near 5,000 feet.

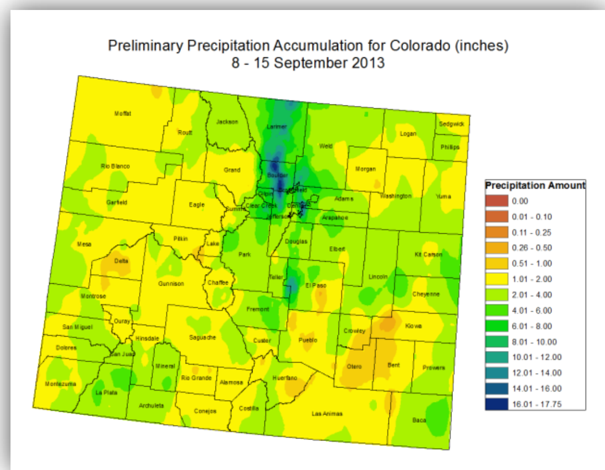

Figure 1 – Colorado Climate Center

The long duration and intense precipitation event combined with steep elevation changes from the mountains to the plains caused the storm to quickly evolve into a catastrophic flood event. In the end, the flood took ten human lives and caused hundreds of millions of dollars of damage, including widespread damage to raw water infrastructure.

The St. Vrain and Left Hand Water Conservancy District ("District") in Longmont, Colorado was organized April 19, 1971 as a non-profit water conservancy district under the Water Conservancy Act of the State of Colorado. The District is a quasi-municipal corporation and a political subdivision of the State of Colorado. The District serves its constituents by protecting water rights, encouraging improved water management, and supporting the development of additional water storage. The District is administered by a nine person Board of Directors appointed by District Judges within Boulder, Weld and Larimer Counties. The District's 320,000 acre boundary extends from the Continental Divide in Rocky Mountain National Park eastward to the plains at the confluence of St. Vrain Creek and the South Platte River.

Among the District's primary constituents are mutual ditch companies. Mutual ditch and reservoir companies are special purpose Colorado corporations which exist to deliver water to their shareholders for irrigation and domestic purposes. Many of these companies have operated within Colorado and in the St. Vrain valley since before statehood. Within the boundaries of the District, there are 94 such companies that collectively provide water for to irrigate over 70,000 acres of agricultural farmland. Irrigated agriculture contributes substantially to the local economy and is a significant reason why the St. Vrain valley is a highly desirable place to live and work.

For well over 100 years, mutual ditch and reservoir companies have installed, operated, and maintained critical water infrastructure necessary for agricultural production and this region's quality of life. Congress and others have historically acknowledged the significance of these companies. Almost 90 years ago, the Revenue Act of 1926 provided for a conditional tax-exemption that remains integral to the finaical sustainability of these companies.

Section 501(c)(12) of the United States Internal Revenue Code provides that, in order to qualify as tax-exempt, a mutual ditch and reservoir company must receive no less than 85 percent of its income each year from its members (shareholders), which is collected through annual assessments. If a company fails to meet this test in any given year, it may jeopardize its tax exempt status for that year. In the last 20 years, this requirement has proven difficult for many mutual ditch and reservoir companies to meet, as maintaining aging water infrastructure is often more costly than can be financed by shareholder assessments. Without the ability to generate outside sources of income, mutual ditch and reservoir companies are often required to short-change needed capital improvements thereby increasing costs, reducing efficiency and, in some cases, risking public safety.

To adequately address capital needs, mutual ditch and reservoir companies must be able to generate income from other sources without jeopardizing a company's tax-exempt status. This is a need that absolutely must be addressed long term. We are pleased however, that at least for the short term the National Disaster Tax Relief Act of 2014 ("The Act") does address the need for those mutual ditch and reservoir companies operating in a qualified 2012 and 2013 disaster area. **The Act is absolutely critical to ease the burden on mutual ditch and reservoir company shareholders rebuilding from the September 2013 Colorado flood**.

Figure 2 - Destroyed ditch company diversion and headworks

Within the boundaries of St. Vrain and Left Hand Water Conservancy District, 44 of the 94 local ditches and reservoirs suffered damaged infrastructure from the flood totaling approximately $18.4M.

Under the leadership of the Colorado Water Conservation Board a collaborative "coalition" approach to rebuilding is happening. Through the District, each mutual ditch and reservoir company is participating in a coalition that has developed a watershed specific "Master Plan". The goal of the Master Plan is to promote healthier riparian corridors and stream systems that are better able to handle future floods, and minimize damage to critical infrastructure, including that used for agricultural production.

Through collaboration, many mutual ditch and reservoir companies recognized the need to rebuild their infrastructure with consideration given to the ecosystem and to design elements that will withstand future high-flow events. For example, in St. Vrain Creek alone, several destroyed diversions structures that were fish impediments pre-flood, are now rebuilt and are fish passable. An additional four diversion structures with similar fish-friendly design elements are now under consideration or in design phase. This demonstrates the continued commitment by the agriculture community to be stewards of not only the land and water, but also of the ecosystem. Moreover, it's an example of the **community connectedness and "payback" for the vision, leadership, and investment Congress provided back in 1926**.

Figure 3 – Repaired ditch company diversion and headworks

Just over one year since the September 2013 flood, infrastructure repairs and rehabilitation are still ongoing. I am pleased to report, however that as of September 16, 2014, 80 percent of the 44 damaged ditch and reservoir companies are back online, with 95 percent expected back online by the end of this year. Mutual ditch and reservoir companies whose rebuilding projects cost less than $25,000 were able to obtain a grant from the State of Colorado. For many ditch and reservoir companies, rebuilding projects are well in excess of $25,000, and shareholders assessed themselves for the expense to rebuild.

Reimbursements of some rebuilding projects are possible for a small fraction of the companies, with 12 of the 44 mutual ditch and reservoir companies qualifying for Federal Emergency Management Association ("FEMA") assistance. Additionally, other funds were recently made available from Housing and Urban Development ("HUD") through the Community Development Block Grant – Disaster Recovery ("CDBG-DR) program, which may be accessible by these companies.

FEMA project worksheets for these rebuilding projects have been approved, though reimbursements are slow and to date very few mutual ditch and reservoir companies have received funds. The tax implications for 501(c)(12) mutual ditch companies that receive this funding is a real concern as it effectively reduces the amount of federal assistance. Reduced assistance creates additional cost to the shareholders, and adds stress to the agriculture industry and economy. **The Act will provide tax, industry, and community relief**.

With only 12 of the 44 mutual ditch and reservoir companies approved for FEMA reimbursement, others have been forced to determine whether to finance repairs through substantially increased, long-term assessments, or through the sale or lease of real property. For those situations where proceeds from sales or leases would reduce the total amount of shareholder contributed income below 85 percent, the company would lose its tax exemption and face a probable tax liability. The current mandate that mutual ditch and reservoir companies receive 85 percent of its income from shareholders impedes one of the few creative opportunities for companies to finance necessary repairs without tax liability. **The Act will provide funding options and incentivize ditch companies to reinvest sale proceeds into their damaged infrastructure**.

On behalf of the constituents of St. Vrain and Left Hand Water Conservancy District, thank you to the sponsors and other supporters of The Act. **The Act will have a positive impact on the September 2013 Colorado flood recovery effort, strengthen communities, and make further investments in critical water infrastructure to maintain Colorado's agricultural economy and quality of life**.

Sincerely,

Sean T. Cronin
Executive Director

Sean is the Executive Director for the St. Vrain and Left Hand Water Conservancy District in Longmont Colorado. He has over 19 years experience in water resource planning and policy.

Sean earned his Bachelor's Degree in Environmental Science from the University of North Carolina at Charlotte, and spent two years as a Natural Resources Agent with the North Carolina Cooperative Extension Service before moving to Colorado. Prior to joining the District, Sean spent 13 years with the City of Greeley, Colorado, including the last six as their Water Resources Manager.

Sean is chairman of the South Platte Basin Roundtable, a recipient of the Colorado Foundation for Water Education – Emerging Leader Award, and guided the District's flood recovery efforts that were recognized by the Special District Association through its annual Collaboration Award.