

# **1923 South Platte River Compact: 2025 Litigation Update**

**September 4, 2025 webinar**

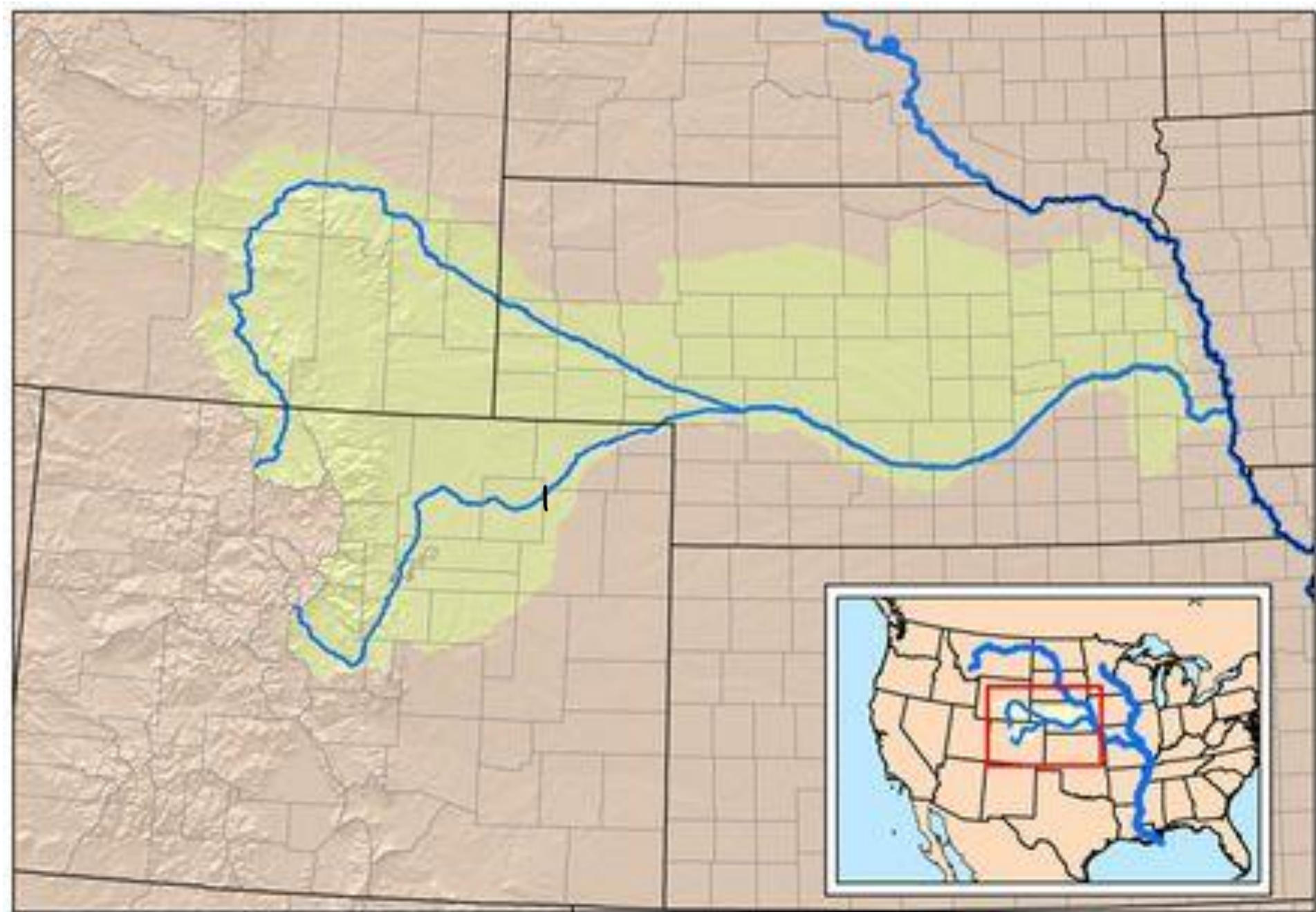
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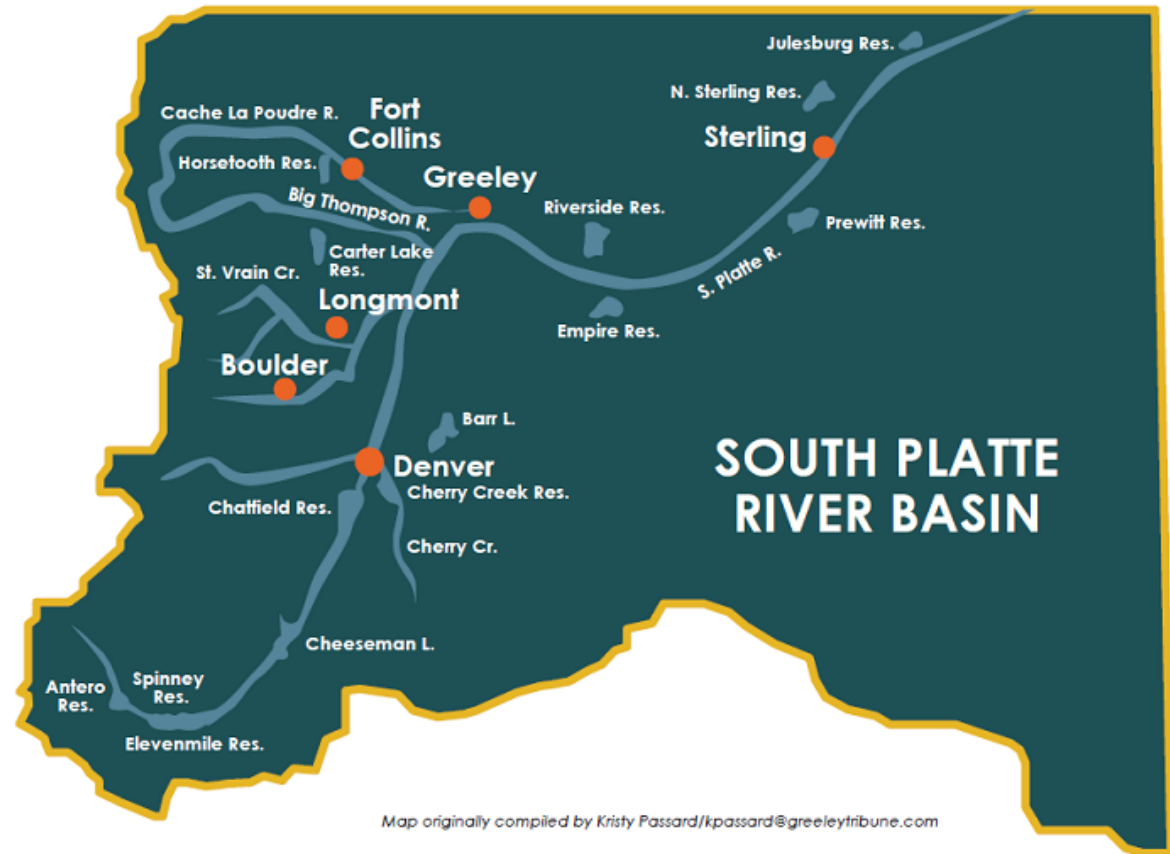
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# About the South Platte River Basin

The South Platte River Basin is critical to the State of Colorado.

It is currently home to approximately 70 percent of the state's population and includes the Denver Metropolitan area, large northern Colorado communities such as Loveland, Greeley, and Fort Collins, and numerous smaller but rapidly growing communities.



**FIGURE 1.** South Platte River Basin

Seven of the 10 top agricultural producing counties in Colorado are in this basin. The basin is also host to recreational amenities for fishing, hiking, boating, skiing, and state and national parks – all contributing significantly to the state's economy.

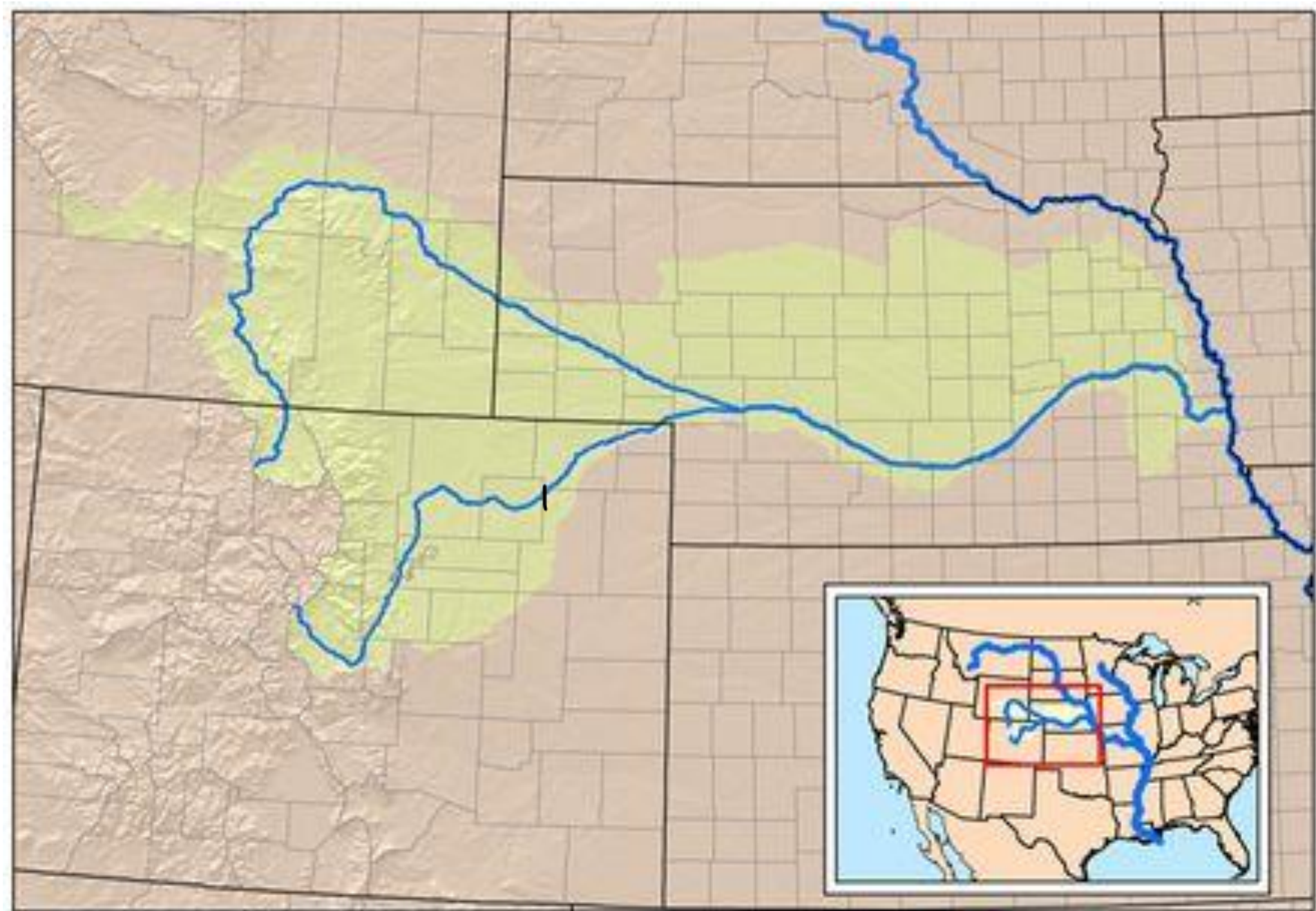


# South Platte compact fundamentals

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- 1. 1923 compact divides South Platte into upper section & lower section. **Neb has no water rights in the upper section.**
  - Denver is in the upper section.
- 2. compact negotiated to ensure that Colo would administer junior surface water diversions in lower section to protect the senior Western Canal taking water to Nebraska.
  - 120 cfs for Western Canal. Cf. 1916 Neb lawsuit
- 3. In lower section Nebraska is entitled to up to **500 cfs** off-season flows for the undeveloped **Perkins County Canal**, less up to 35,000 AF for Colo
  - **plus any surplus inseason flows!!**







# South Platte basin irrigation

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- ~ 1 million acres irrigated in SP basin (900,000 now?)
  - 4+ million acres in Colorado served with irrigation infrastructure but ~3 million acres consistently irrigated
- 340,00 SP irrigated acres could be dried up to meet Denver metro 2050 water needs
- 55% SP irrigation is from surface water; 17% wells & 28% surface water + supplemental wells
- 2002-2025+ drought effect: ~9,000 SP decreed wells (water courts) but ~4,000+ jr wells have been shut off because of no replacement water (surplus storage)
- ~1,000 irrigate only 2 days/week



## Colorado water planning background

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- 2002: ongoing 1200 year “millennium” drought in Colo River basin began
- 2002: 4000+ junior wells shut down in South Platte basin
  - 1,000 wells pumping 2 days/wk
  - lack of surplus storage to provide replacement water for jr wells pumping out of priority
- 2010 Colorado Water Plan published – “buy & dry” for Denver metro
  - could be 340,000 SP irrigated acres dried up
- regional basin plans being developed (SP 2015, 2022)



## 2015 South Platte basin issues

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- address projected 500 KAF (thousand acre feet) municipal and industrial (M&I) supply gap in 2050
  - “buy & dry”: buying irrigation water & converting it over time to M&I use
  - would dry up 340,000 SP irrigated acres
- SP ag interests want Denver metro to avoid buy & dry to protect remaining SP irrigation
- has led to 2017 SP storage study & 2020 SPROWG concept study





## 2017 South Platte Storage Study

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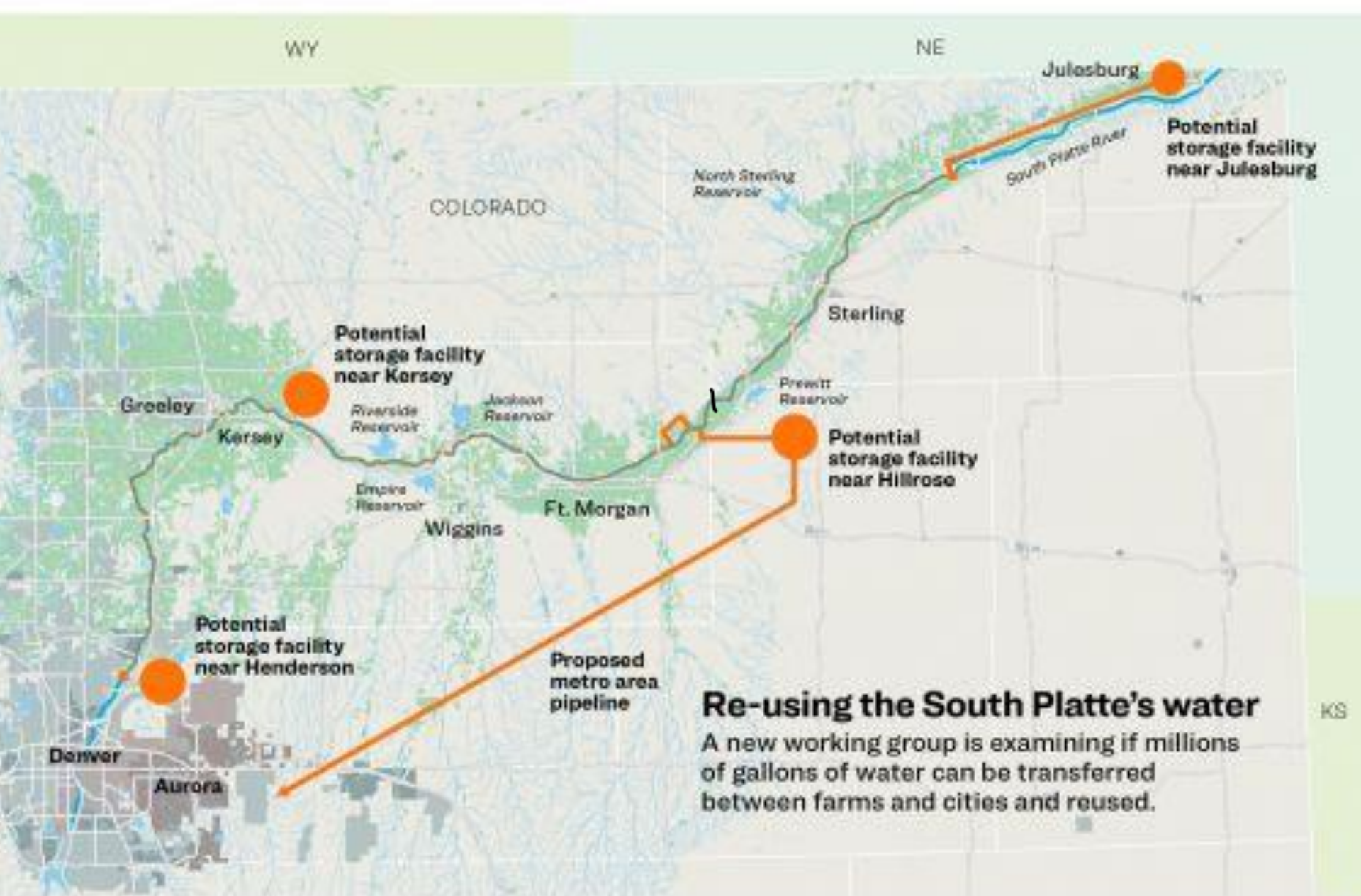
- objective: determine for the Colorado legislature how much SP water was being delivered to Nebraska “in excess of the minimum amount needed to maintain compact compliance”
- study estimated average annual “surplus” flows entering Neb average 397 KAF, ranging from 79 KAF to 951 KAF.
  - 397 KAF = ~548 cfs
  - good irrigation wells pump about 2 cfs/second (898 gpm)
- Adjusted for expected lower SP basin Colorado water projects (up to 35 KAF), this would fall to annual average of 332 KAF or 459 cfs, ranging from 54 KAF to 815 KAF.
- we like having this so-called “excess water” coming into Neb ☺



## 2020 SPROWG study

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- South Platte Regional Opportunities Water Group study — basin municipal water managers
- would capture SP return flows & runoff before it gets to lower section & pipe it back up to Denver for treatment for M&I use
  - 215 KAF to 409 KAF storage
- state political benefits: (1) Denver gets credit with western slope for intensively reusing Colo River transmountain diversions & (2) gets some SP ag credit for trying to reduce 2050 500 KAF M&I supply gap
  - but only ~50 KAF M&I, ~100 KAF in droughts.
- projected costs: \$1.2 - \$3.4 billion





## Nebraska response

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- \$500 million proposed in Governor Ricketts's 2022 budget for Perkins County Canal
- now over \$600 million in total appropriations to date
- in 2022, inseason inflows to Western Canal fell below 120 cfs; Western Irr. Dist. crop failures from irr water shortage
  - compact irrigation season: April 1-Oct. 15 (6½ months).
- DWEE (Neb Dep't of Water, Environment & Energy) working to acquire voluntary easements for canal right of way
- Colorado has publicly opposed DWEE easement acquisitions in Colorado (but no Colo state litigation yet).



# Nebraska lawsuit

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- Nebraska filed lawsuit in US Supreme Court (SCOTUS) against Colorado July 16, 2025.
- Neb alleges Colorado has not protected Western Canal's senior 120 cfs inseason right
- alleges Colorado has diminished the 500 cfs offseason flows for Perkins County Canal
- alleges Colorado has diminished the surplus inseason flows for Perkins County Canal
- allegations based in large part on Colorado allowing junior wells to deplete South Platte streamflows, & ~not regulating the wells to meet 120 cfs Western Canal senior appropriation





## lawsuit, con't

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- Colorado has until October 15, 2025 to reply to Nebraska's complaint
- if SCOTUS accepts the case (very likely IMO), SCOTUS will almost certainly appoint a "special master," often a retired judge, to hear the case & make report with recommendations to SCOTUS
  - this would be similar to Kansas v. Nebraska Republican River Compact lawsuit
  - standard practice in interstate water lawsuits
- case could take years to resolve



## possible Colorado issues

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- issue: whether Nebraska can exercise right of condemnation in Colorado, as authorized by Compact
  - pretty unique compact provision
- likely issue: whether Nebraska can develop the 1923 Perkins County Canal in 2025.
  - has Nebraska abandoned its right to develop the canal through inaction? another unresolved legal issue
  - due diligence; state sovereignty
- legal wild card: central Platte whooping crane habitat
  - would canal benefit habitat? Would SPROWG hurt it?



## big picture issues

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- Nebraska may have difficulty funding construction of the Perkins County Canal
- SPROWG group may find financing the SPROWG project challenging also
- municipalities in Florida, Texas, Southwest US have begun using highly treated municipal sewage as part of their drinking water supply mostly as a last resort. Could be a better option for Denver metro -- ? 😊
- IMO treating sewage for drinking water may become an option for farms, ranches, rural residents, rural communities facing drought-related drinking water challenges. 😊



# Questions? 😊

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