

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721

Denver, Colorado 80203

Phone: (303) 866-3441

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www.cwcb.state.co.us



MEMORANDUM

TO: Colorado Water Conservation Board Members

FROM: Randy Seaholm *RS*
Chief, Water Supply Protection

DATE: March 9, 2009

RE: **Agenda Item 23, March 17-18, 2009 Board Meeting: Water Supply Protection - Colorado River Compact Compliance Scope of Work**

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimble
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Background

Section 10 of the 2008 Projects Bill (HB 08-1346) authorized the expenditure of \$500,000 from the Colorado water conservation board construction fund for the board to:

"undertake a study to identify issues associated with the administration of state water rights in the Colorado river basin under the terms of the Colorado river and upper Colorado river compacts , to evaluate options to avoid the curtailment of uses if at all possible, and to evaluate options for curtailing use in Colorado in an equitable manner should the terms of the Colorado river compact fail to be met. The study is to be used by the state to look at options openly for avoiding curtailments if possible and by the state engineer to develop curtailment rules for use in water right administration should curtailments become necessary under terms of the Colorado River compact."

Request for Proposal (RFP)

Attached is a draft RFP for the conduct of this study. Staff would like to review the draft RFP with the Board. The RFP at this point has been reviewed by the State Engineer's Office, Colorado Attorney General's Office, Southwestern Colorado Water Conservation District staff, Colorado River Water Conservation District staff and Northern Colorado Water Conservancy District staff.

During the review several items were raised that staff would like to discuss with the Board:

1. Given the potential scope of this effort, staff has suggested using only one-half of the budget at the outset with the idea of reserving the rest for a phase II or to expand on some areas as the study progresses.
2. It was recommended that the development of triggers that would set in motion efforts to avoid or administer a curtailment be part of the study. Staff certainly agrees such is required but wonders if that effort should occur here, in the next phase of the Colorado River Water Availability Study, or wait until the Upper Colorado River Commission identifies triggers that will implement curtailments in the Upper Basin.

3. It was recommended that infrastructure and other management actions which may be required to implement an alternative be fleshed out in this effort. Staff would recommend saving that effort for the second phase.
4. It was suggested that the study look at the adequacy of native supplies and we interpret that suggestion as including a look at water rights\availability on the east slope. Staff feels this goes beyond the scope of the legislative directive and believe it would also overlap with the SWSI.
5. It was suggested that the study look at only critical or essential uses that cannot be interrupted. Staff suggests taking a broader look at this matter to start with by including all uses that potentially cannot afford to be interrupted. Following that we can look at applying more specific criteria for determining the critical or essential water uses that cannot be interrupted without significant impacts.
6. It was suggested that the effort identify human and economic consequences of an alternative. Staff agrees but feels any detailed effort along these lines would be better done in a phase II.
7. There is concern on all sides about being open in this effort. We certainly want to be open but we also want to be careful how things get framed or presented publically given the implications such could have. Therefore, we believe we need a careful screening process before putting things out to the public as a potential alternative.

Recommendation – Staff is prepared to start this RFP through the procurement process with the Board's concurrence.

Attachment

Request for Proposals

Draft 3 – March8, 2009

The Development of Strategies for Colorado River Compact Compliance Strategies

REQUEST DATE: _____, 2009

CLOSING DATE: _____, 2009

POINT OF CONTACT: Maggie Van Cleef
Colorado Department of Natural Resources-Purchasing
1313 Sherman Street, Room 423
Denver, Colorado 80203
Maggie.VanCleef@state.co.us
(303) 866-4243

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Colorado Water Conservation Board
1313 Sherman Street, Room 721
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RECITALS

The recent multi-year drought and increasing interstate and intrastate demands on the Colorado River has demonstrated that the Upper Division States, including Colorado, may be called upon to implement measures that will assure continued compliance with Article III(d) of the Colorado River Compact of 1922. That provision states: “the States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.”

The Upper Division States are also required to supply one half of any deficiency to the 1944 Mexican Treaty delivery obligation of the United States of 1.5 million acre-feet annually, whenever necessary. See Article III(c) of the Colorado River Compact.

PURPOSE The purpose of this Request for Proposal”(RFP), which should be viewed from more of a technical perspective than a legal perspective, is to obtain assistance in conducting a study: 1) to identify issues associated with the administration of state water rights in the Colorado River Basin under the terms of the Colorado River Compact and Upper Colorado River Basin Compact, 2) to develop and evaluate options to avoid, minimize or delay a Compact curtailment of uses if at all possible, and 3) to identify, develop and evaluate (pros and cons) concepts for curtailing water uses in Colorado in the event curtailments are required to comply with Article III of the Colorado River Compact and to implement those curtailments in a manner that will allow the maximum use possible of Colorado’s entitlements under the terms in the Colorado River Compact and Upper Colorado River Basin Compact and do so as equitably as possible.

Article III(d) of the Colorado River Compact and Article IV of the Upper Colorado River Basin Compact provide the foundation and reason for this study. To date Article III(d) of the Colorado

River Compact has never been violated and therefore it has never been necessary for the Upper Colorado River Commission or the Upper Division States to consider implementation of Article IV of the Upper Colorado River Compact. Even if the current drought continues it will be many years before these provisions will be violated or invoked. This study is being undertaken with the idea that it may become necessary in the future to address these provisions and Colorado wants to be prepared will in advance of this situation occurring. This study will assume that any curtailments by Colorado will be consistent with any eventual findings and determinations of the Upper Colorado River Commission regarding curtailments by the Upper Division States on whole. This study will be used by the State to discuss the options for avoiding, minimizing or delaying curtailments openly with the public and by the State Engineer to develop compact compliance rules for use in water right administration should curtailments become necessary under the terms of the Colorado River Compacts.

This RFP describes a multi-year program of work that may be phased and is anticipated to take two years, or more.

In responding to this RFP, please provide the following information:

- 1) **Detailed Scope of work** for completing this project. Prospective contractors should provide a detailed outline of the type of work to be performed to address the tasks identified in the general Scope of Work for Contract Services section of this RFP.
- 2) **List of relevant project experience** within the past five years, including name, location, and brief description of the projects; name, address, and phone number of the contracting officer for the client; and identification of key project participants and their tasks.
- 3) **Resumes** of all primary investigators and the level of student involvement, if any. Provide a table showing the tasks, responsibilities, and the number of hours each key participant is committing to this project.
- 4) **Schedule** for completing each task in the scope according to the preferred project schedule:

RFP Selection Process

_____, 2009	Proposal submission deadline
_____, 2009	Proposal review period
_____, 2009	
Week of _____, 2009	Interviews/contractor selection

- 5) **Detailed firm fixed price proposal for study.** The proposal should identify costs and hours allocated for each task and total cost for this project under the scope of work. Hourly rates and reimbursable expenses for the proposing firm/individual and any sub-contractors must be attached to the detailed price proposal. The contract will be awarded on a Firm Fixed Price basis to the qualified contractor with an acceptable proposal at the lowest cost.

6) **Conflicts of Interest Statement** addressing whether or not any potential conflict of interest exists between this project and other past or on-going projects, including any projects currently being conducted for water users within the Colorado River Basin as defined in the Colorado River Compact and in particular the State of Colorado.

7) **Description of Insurance** is to be provided with the proposal; proof of insurance will be required before a contract is issued. Minimum insurance requirements include \$1,000,000 general liability per occurrence. To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the state of Colorado its employees, employers, and agents, against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any negligent act or omission by the contractor or its employees, agents, subcontractors, or assignees pursuant to the terms of this project.

TERMS AND CONDITIONS

The selected contractor will be retained by:

Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203

The final "Terms and Conditions" will be negotiated as mutually agreeable. It is understood that the Colorado Water Conservation Board reserves the right to accept any proposal that, in its judgment, is the best proposal, and to waive any irregularities in any proposal. *Proposal costs incurred in response to this RFP will be the responsibility of the bidder. The State of Colorado will not be liable for any costs incurred by the bidder in the completion and submission of the proposal.*

POINT OF CONTACT & RFP DUE DATE

Questions about this RFP should be e-mailed to both Randy Seaholm randy.seaholm@state.co.us and Ted Kowalski ted.kowalski@state.co.us. Questions, responses, and any additional information related to the RFP will be available to all bidders. Three hard copies and one electronic copy of your proposal in PDF format must be delivered to the offices of the

Colorado Department of Natural Resources-Purchasing Office
1313 Sherman Street, Room 423
Denver, Colorado 80

And to the

Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80403

NO LATER THAN 5:00 p.m. MDT ON _____, 2009

138
139 **SCOPE OF WORK FOR CONTRACT SERVICES**
140

141 **INTRODUCTION**

142 The recent drought has resulted in Lake Powell reaching very low storage levels, levels not seen
143 since the initial filling of Lake Powell. As a result, Colorado and the other Upper Division States
144 (Wyoming, Utah, and New Mexico) believe there is a possibility, although small, of having to
145 operate under certain constraints imposed by the Colorado River and Upper Colorado River
146 Basin compacts. In particular, Article III(d) of the Colorado River Compact provides that “the
147 States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted
148 below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in
149 continuing progressive series beginning with the first day of October next succeeding the
150 ratification of this compact.” Article IV of the Upper Colorado River Basin Compact sets forth
151 general principles to be applied by the Upper Colorado River Commission in the event the
152 curtailment of uses by the Upper Division States becomes necessary to satisfy Article III(d) of
153 the Colorado River Compact. However, it is incumbent on each Upper Division State to
154 determine how it will impose any curtailments assigned to it by the Upper Colorado River
155 Commission and to administer that State’s water rights so as to result in the delivery at Lee Ferry
156 of that state’s share of the quantity of water determined to be necessary by the Upper Colorado
157 River Commission to satisfy the terms of the Colorado River Compact. The development of
158 compact compliance criteria (none currently exist) for the Upper Basin and Upper Division
159 States is being done by the Upper Colorado River Commission and IS NOT a part of this study
160 effort.
161

162 To date it has never been necessary to implement any Colorado River Compact curtailments.
163 Nevertheless the recent drought has demonstrated there is a potential for such and has provided
164 an impetus for the State to explore: 1) how it would impose curtailments if necessary under the
165 terms of the compacts (i.e. administer a compact call); and, 2) options available to the State to
166 avoid, minimize or delay curtailments. In 2008, the General Assembly appropriated funds to the
167 Colorado Water Conservation Board to conduct a study related to these two topics. Of particular
168 importance to this study effort is the fact that the Colorado River Compact and the Upper
169 Colorado River Basin Compact exempt present perfected water rights (For purposes of this study
170 only we will use November 24, 1922 as the appropriation date for determining the present
171 perfected rights exclusion) from any curtailments. These rights might be used to help firm
172 critical municipal and other uninterruptable demands temporarily through voluntary agreements.
173

174 **PURPOSE**

175 The purpose of this Request for Proposal”(RFP), which should be viewed from more of a
176 technical perspective than a legal perspective, is to obtain assistance in conducting a study: 1) to
177 identify issues associated with the administration of state water rights in the Colorado River
178 Basin under the terms of the Colorado River Compact and Upper Colorado River Basin
179 Compact, 2) to develop and evaluate options to avoid, minimize or delay a Compact curtailment
180 of uses if at all possible, and 3) to identify, develop and evaluate (pros and cons) concepts for
181 curtailing water uses in Colorado in the event curtailments are required to comply with Article
182 III of the Colorado River Compact and to implement those curtailments in a manner that will
183 allow the maximum use possible of Colorado’s entitlements under the terms in the Colorado

River Compact and Upper Colorado River Basin Compact and do so as equitably as possible.

TASKS

The Tasks and deliverables include, but are not limited to the following:

DATA NEEDS

1) Identification and analysis of all pre-compact perfected water rights (For purposes of this study only we will use November 24, 1922 as the **appropriation** date for determining the present perfected rights exclusion.) that currently exist and that could be transferred, exchanged or used for other purposes during a curtailment. This analysis should:

- a) Identify and provide the locations of all pre-compact perfected water rights by Water Division and the major drainage basins within the Water Division;
- b) Estimate the amount of consumptive use (in volume) of the pre-compact water rights in each basin suitable for transfer or exchange (For example, it may not be acceptable to remove water from an orchard for more than a day or rights held by the United States) and categorize such in a meaningful fashion;
- c) Identify the potential periods of use during a year; and
- d) Summarize how much pre-compact perfected water is potentially available to help offset potential curtailments.

2) Identification and analysis of all pre-compact perfected water rights that have been changed in Water Division No. 4-7 and the amount of consumptive uses available (in volume) as a result of those change decrees.

3) Identification and analysis of the pre-compact perfected water rights that have been abandoned prior to 2007. This analysis should document the following for Water Division Nos. 4-7: 1) the number of pre-compact perfected water rights that had been used prior to November 24, 1922; 2) the type of use that had occurred, including the seasonality of those uses; and, 3) the approximate amount of consumptive use (in volume) that existed as of November 24, 1922. The goal here is to help determine Colorado's uses as of November 24, 1922 and not necessarily how much of the pre-compact perfected water rights remain available for use today.

4) An analysis of all municipal and other critical water supplies considered to be uninterruptable. This analysis should provide the locations of these water rights by Water Division and the major drainage basins in the Water Division and estimate the amount of water required by these water rights.

ALTERNATIVES TO AVOID, MINIMIZE OR DELAY CURTAILMENTS

In developing the alternatives to avoid, minimize or delay curtailments, the following options should be included:

1) Using information from the "Data Needs" assess the operation of a consumptive use water bank (such as proposed by Western Slope interests in their concept paper) that would provide temporary supplies utilizing pre-compact perfected water rights on a willing lessor-willing lessee basis. Evaluate the administration of a water bank during a curtailment in relation to Colorado water right administration.

2) The use of post compact storage (Compact compliance storage pools) so that if a curtailments are necessary, water could be released from discrete storage pools specifically designated for this purpose (e.g. Aspinall Unit in particular Blue Mesa Reservoir). Identify the

amount storage potentially available.

3) Evaluate current State water right administration and other State policies that may be reducing the number and value of pre-1922 water rights and suggest changes to these policies and operations or new policies that would help protect pre-Colorado Compact uses (i.e. avoid abandonment of pre-1922 water rights).

4) Evaluate ways to accomplish compact compliance with minimal impact to water users; this may include strict priority administration, administration by water divisions or subbasins, anticipatory curtailments, curtailments of new users prior to curtailing existing uses, curtailments by use types or any combination thereof if deemed feasible.

5) Identify and evaluate water supply augmentation options (cloud seeding, etc.) that may be either stand alone actions or elements of a particular alternative.

6) During the development of alternatives, identify concepts or options for curtailing water uses in Colorado to consider in the development of any State compact compliance rules.

We encourage the consultants to consider how the information developed through the Colorado River Water Availability Study would be useful in this process as well as the potential interactions with the Evaluation of Water Supply Strategies. We suggest that a standard set of questions be developed for use during the recommended consultations and interviews. Please note that any suggested changes to existing laws and policies or suggested new laws or policies identified in the development of alternatives will be cleared with the Attorney General, State Engineer and CWCBS as provided for under the consultation process prior to incorporating any such concept into an alternative.

CONSULTATIONS

1. Consult with the Office of the Attorney General, State Engineer and CWCBS to determine the appropriateness of assumptions for use in conducting the analysis of each proposed alternative or method.

2. Consult with Colorado's advisors to Colorado's Upper Colorado River Commissioners.

3. Interview the ten (10) largest users of Colorado River water likely to be curtailed and the Colorado River Water Conservation District and the Southwestern Water Conservation District.

4. Consultations with the Basin Roundtables following the development of a Colorado Department of Natural Resources and Colorado Attorney General approved suite of alternatives.

DELIVERABLES

A report documenting:

a. The pre-1922 water right information collected;

b. The various methods that could be used to avoid, minimize or delay curtailments and a description of how each could be implemented, include screening criteria for the various methods as appropriate;

c. The various ways that Colorado could accomplish compact compliance and a list of concepts to consider in developing rules for administering a compact call. Potential methods may include but are not limited to: strict priority administration, administration by water divisions or subbasins, anticipatory curtailments, curtailment of new water rights prior to curtailing any existing users, curtailments by use types to the extent deemed appropriate by the state or a combination if deemed feasible;

- d. The analysis done to describe the benefits and drawbacks of each proposal for avoiding, minimizing or delaying a curtailment; and
- e. A consolidation of comments received from the Basin Roundtables.

The contractor selected will be expected to hold progress meetings and provide drafts of task memos at appropriate times during the conduct of the study. The contractor will also be expected to respond to review comments. Ten (10) hard copies of the final report and appendices will be provided along with 25 CD's of the same.

CONFIDENTIALITY

All work (including all correspondence, communications, data and data compilations, analyses, notes, memoranda, drafts, discussion papers, etc.) shall be deemed privileged and confidential work product within the definition of the term "work product" provided in the Colorado Open Records Act (C.R.S. 24-72-202 (6.5)) and shall not be disclosed to any other person or entity without express written consent of the Colorado Water Conservation Board, the State Engineer, and the Office of the Attorney General.

BUDGET AND PAYMENTS

The approximate budget for this phase of work is \$250,000. There may be additional phases in the future funded under separate budgets. Invoices will be submitted monthly for the work completed. Five (5) percent of each invoice will be withheld until the completion of the study.

AVAILABLE INFORMATION

1. *Access to the Colorado Decision Support System (CDSS), including all water rights information contained therein and which includes the water rights tabulations of the Colorado State Engineer for the entire state, diversion records, call records and other hydrologic and water use data. A graph of water rights decreed during selected time periods is available for use to help inform the early stages of the study.*
2. *The Statewide Water Supply Initiative (SWSI) may be used to identify existing and future water needs.*
3. *Discussion or concept papers concerning compact compliance from various organizations and governmental entities. The only one we are currently aware of is the concept paper being developed jointly by the Colorado River Water Conservation District and the Southwestern Water Conservation District.*
4. *Other public sources of information contained in the CWCB and SEO libraries as well as the CWCB water information system.*
5. *Existing hydrologic data may be relied on as necessary, but preference should be given to the utilization of information developed as part of the CWCB's Colorado River Water Availability Study currently in progress.*
6. *Drafts of the "Evaluation of Water Supply Strategies."*
7. *Colorado River Compact Minutes*