

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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DATE: May 11, 2009

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SUBJECT: **Agenda Item No. 11, May 19-20, 2009 Board Meeting**
Stream and Lake Protection Section – Potential Lease of Horn Ranch Water Rights

Introduction

The CWCB staff has been meeting with representatives of Shorefox Development, LLC (“Shorefox”) and The Nature Conservancy (“TNC”) to discuss a potential water rights acquisition that would benefit instream flow (“ISF”) water rights on the Fraser River and the Colorado River. While it is likely that a long-term or permanent acquisition involving cooperative efforts with additional stakeholders may result from these discussions, staff is working on compiling the necessary information to obtain approval from the State and Division Engineers of a temporary lease of all or a portion of the water rights under section 37-83-105(2), C.R.S. (2008) and ISF Rule 6k. At this Board meeting, staff will present the information it has compiled to date and discuss the next steps in the process. This is an informational item with no action required.

Discussion

A. The Horn Ranch Water Rights

The Horn Ranch, owned by Shorefox, is located near the confluence of the Upper Colorado River and Fraser River, close to the Colorado-Big Thompson Project West Slope diversion structures and the Town of Granby. (See vicinity map attached to this memo). Shorefox’s original project was a private development and fishing club with a golf course on the Horn Ranch property. However, with the recent decline of the real estate market and economic indicators, it became apparent to Shorefox that a better alternative to the high density development was to utilize the water rights on the West Slope for the benefit of the streams and water users downstream. Shorefox now is seeking an alternative development scenario, and is working with TNC on a potential conservation-oriented development that would include providing water for ISF protection. In the short-term, Shorefox has offered to enter into a temporary lease of the Horn Ranch water rights to the CWCB for ISF use on the Fraser and

Colorado Rivers under section 37-83-105(2), C.R.S. The water rights available for such a lease are shown in the table below.

Water Rights of the Horn Ranch Available for Lease

Irrigated Lands Ditch	Acres Irrigated	Adjudication Date	Appropriation Date	Cubic Feet per Second	Source
Bunte No. 2	568	August 3, 1911	May 15, 1886	3.25	Colorado River
Bunte No. 3		August 3, 1911	May 15, 1887	1.25	Colorado River
Bunte Highline		August 3, 1911	May 31, 1887	17.82	Willow Creek
Bunte Highline		November 7, 1952	October 31, 1914	14.14	Willow Creek
Bunte Highline		November 7, 1952	September 15, 1941	8.04	Willow Creek
Griffith	82	August 3, 1911	August 21, 1883	11.75	Fraser River
Peterson	128	August 3, 1911	June 1881 & May 1885	10.90	Fraser River
Total:	778	-	-	67.15	

Discussions of potential alternate development scenarios have identified several environmentally beneficial objectives, including: (1) preservation of the land by TNC for environmental purposes; (2) use of the Fraser River water rights to benefit stream flows in Grand County; (3) use of the Bunte Highline water right, via storage in West Slope reservoirs, for instream flows on the mainstem of the Colorado River; and (4) mitigation of the local impacts of the Denver Water Board's Moffat Firming Project and Northern Conservancy District's Windy Gap Firming Project. Under one potential scenario, assuming that necessary cooperative agreements would be in place, the Horn Ranch water rights could be diverted and released using the existing storage and diversion structures of the CBT project to "re-time" the water for enhanced stream flows. However, much work remains to be done to develop a long-term plan for use of the Horn Ranch water rights in connection with new development plans for the Ranch and ISF use of the water rights. These efforts will include: (1) CWCB staff and others identifying an approach to using the Horn Ranch water rights that would provide maximum benefits to the Fraser River and Colorado River; (2) Shorefox and TNC initiating discussions with potential project partners, who could include Grand County, Town of Granby, Denver, and Northern Colorado Water Conservancy District; and (3) identifying water users who may be interested in using the historical consumptive use of, or water delivered under the Horn Ranch water rights downstream of the ISF reaches.

For the short-term, Shorefox is interested in an interim temporary lease of the Horn Ranch water rights to the CWCB, with an option for later purchase of the water rights, as Shorefox works on its alternative development plans.

B. Potential Benefits to ISF Water Rights

The leased water rights could be used to preserve the natural environment to a reasonable degree on the Fraser and Colorado Rivers by providing additional water to the streams during times that the decreed ISF water rights are not met due to their relatively junior priority. Staff, with assistance from CWCB's consulting engineer, Ross Bethel, has conducted a preliminary analysis of historical instream flow shortages along with the historical diversions to estimate a potential benefit of the lease of water rights associated with the Horn Ranch to ISF water rights on the Fraser and Colorado Rivers.

Decreed Instream Flow Water Rights That Could Benefit from Horn Ranch Lease

CWCB Case No.	Stream	Amount (cfs)	Approp. Date	Upper Terminus	Lower Terminus
5-90CW308B	Fraser River	30 (5/15-9/15) 19 (9/16-5/14)	11/27/1990	Confl Crooked Creek	Confl Colorado River
5-90CW300	Colorado River	40 (5/1-8/31) 20 (9/1-4/30)	11/27/1990	Outlet Granby Reservoir	Confl Fraser River
5-80CW447	Colorado River	90 (year round)	7/8/1980	Hdgt Windy Gap Project	Confl Williams Fork River
5-80CW446	Colorado River	135 (year round)	7/8/1980	Confl Williams Fork River	Confl Troublesome Creek
5-80CW448	Colorado River	150 (year round)	7/8/1980	Confl Troublesome Creek	Confl Blue River

Fraser River

Preliminary analysis shows that diversions of the Griffith and Peterson Ditches water rights used on Horn Ranch were 100% depletive to the Fraser River. Therefore, the full historical diversion amounts could be used to preserve the natural environment to a reasonable degree up to the decreed ISF amount of 30 cfs (May 15-Sept 15) on the lower 4-mile section (downstream of the ditch diversions) of the Fraser River.

The preliminary analysis estimates that the ISF was not met in this reach of the Fraser River in 5 of the last 21 years (24% of the years, usually in dry or very dry years) during June, July, and August. The diversion records show that the Griffith and Peterson Ditches water rights were diverted from the Fraser River mainly in May, June and July. Therefore, both ditch rights could benefit the ISF up to the decreed amount mainly in June and July. The analysis further shows that a lease of the Griffith and Peterson Ditches water rights could benefit the stream to some extent nearly every day that the ISF is not met (124 days of benefit out of 126 days the ISF was not met during the study period). This lease could benefit the ISF on the lower 4-mile section of the Fraser River in approximately 2.4 years of the next 10 years. During times the ISF is not met, the lease could add approximately 1 to 10 cfs to the Fraser River to help bring the flow up to the decreed ISF amount.

Colorado River

The Bunte Highline Ditch, Bunte No. 3 Ditch and Bunte No. 2 Ditch water rights used on Horn Ranch were 100% depletive to the Colorado River segments between the location of diversion and historical return flows. Therefore, a portion of the ISF reach on the Colorado River upstream of the Fraser River confluence could benefit from full diversions of the Bunte Highline Ditch whereas the ISF reaches downstream of the confluence with the Fraser River could benefit from the historical consumptive use associated with these ditches (in addition to that of the Griffith and Peterson Ditches).

Four ISF reaches on the Colorado River could benefit from this lease: (Reach 1) between Granby Reservoir and the Fraser River; (Reach 2) between Windy Gap Pump and the Williams Fork River; (Reach 3) between the Williams Fork and Troublesome Creek; and (Reach 4) between Troublesome Creek and the Blue River. Preliminary analysis using the State's CDSS Colorado River model for the years 1986-2005 indicates that the ISF typically is not met in:

- Reach 1: 5 years of the 20 years investigated during August and September
- Reach 2: 8 years of the 20 years during September

- Reaches 3 and 4: 15 years of the 20 years, principally during May, August and September

Based on historical diversions, the Horn Ranch water rights that diverted from the Colorado and Fraser Rivers could benefit the Colorado River ISFs primarily in May, August and September. The preliminary analysis further shows that a lease of the subject water rights could benefit some of the Colorado River ISF water rights in about 75% of the study years (approximately 7.5 years of the next 10 years). During times the ISF water rights are not met, the lease could add from a fraction of a cfs up to approximately 9 cfs to the Colorado River to help bring the flow up to the decreed ISF amounts.

C. Procedure for Obtaining Approval of a Temporary Lease of Water Rights

The following outlines the steps that CWCB staff and Shorefox must take to obtain approval of this temporary lease under section 37-83-105(2), C.R.S. (2008) and ISF Rule 6k.

1. Shorefox formally offers the CWCB a temporary lease of water rights. Within 5 working days of receiving the offer, the CWCB Director provides a preliminary response to Shorefox.
2. CWCB staff coordinates with Shorefox on preparing and submitting to the State and Division Engineers the information and documentation required by sections 37-87-105(2)(a)(I) and (2)(b)(I), which includes:
 - a. Evidence of Shorefox's legal right to use the subject water rights;
 - b. A statement of the duration of the proposed lease;
 - c. A description of the original points of diversion, the return flow pattern, the stream reach, and the time, place, and types of use of the leased water rights;
 - d. A description of the stream reaches, and the timing and amounts of the proposed ISF use of the leased water rights;
 - e. A reasonable estimate of the historic consumptive use of the leased water rights; and
 - f. Any other relevant information sufficient for the State and Division Engineers to determine that the lease will not injure existing decreed water rights.
3. CWCB staff and Shorefox coordinate on providing the public notice required by section 37-87-105(2)(b)(II), which is written notice of the request for approval of the lease by first-class mail or electronic mail to all parties on the substitute water supply plan notification list established pursuant to section 37-92-308 (6) for Water Division 5. Staff and Shorefox must file proof of such notice with the Division Engineer.
4. Owners of water rights and decreed conditional water rights have 15 days after the date of mailing of notice to file comments on the proposed lease. Such comments shall include any claim of injury or any terms and conditions that should be imposed upon the proposed lease to prevent injury to a party's water right and any other information the commenting party wishes the Division Engineer to consider in reviewing the proposed loan.
5. The Division Engineer shall approve or deny the proposed lease within twenty days after the date of mailing of notice
6. In approving the proposed lease, the Division Engineer must:
 - a. Consider any comments received;

- b. Determine that the operation and administration of the proposed lease will not injure other decreed water rights and will not affect Colorado's compact entitlements; and
 - c. Impose such terms and conditions necessary to ensure that these standards are met.
- 7. In making the above determinations, the Division Engineer is not required to hold a formal hearing or conduct any other formal proceeding, but may do so if the Division Engineer finds it necessary to address the issues.

D. Next Steps After Approval of Lease

ISF Rule 6k.(2) delegates authority to the CWCB Director to accept a temporary lease of water if the State and Division Engineers have made the statutorily required determination of no injury and approved the lease. Rule 6k.(4) provides that at the first regularly scheduled or special CWCB meeting after the Director accepts or rejects a proposed lease, the Board shall vote to ratify or overturn the Director's decision. Consequently, upon notification of the approval of the lease, the Director could accept the offer, which would allow staff and Shorefox to negotiate a lease document. Assuming that the foregoing chain of events occurs, at the July CWCB meeting, staff will ask the Board to: (1) ratify the Director's acceptance of the lease (including authorizing the Director to execute the lease document on behalf of the Board); and (2) authorize the expenditure of funds from the Construction Fund to pay Shorefox compensation for the temporary lease under Financial Policy 19.

Staff Recommendation

While this is an informational item with no action required, staff would appreciate input from the Board on this proposed temporary lease of water rights for ISF use.

