

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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MEMORANDUM

TO: Colorado Water Conservation Board

FROM: Jennifer Gimbel
Dan McAuliffe
Christian Lyons
Lisa Barr

DATE: March 16-17, 2010

SUBJECT: March 2010 CWCB Board Meeting Director's Report

Bill Ritter, Jr.
Governor

James B. Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

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~FEDERAL AND INTERSTATE~

NATIONAL INTEGRATED DROUGHT INFORMATION SYSTEM: The Western Governors' Association and Western States Water Council will be holding a workshop on the National Integrated Drought Information System and Climate Services for the West to be held on March 31-April 1, in San Francisco, California. www.westgov.org/wswc/meetings.html. This workshop will provide a forum for a diverse group of stakeholders and decision-makers to tell agencies how they find and use data in decision-making, what data and analytical tools are most helpful, and what information they need that is lacking or not easily available to help improve their decision-making. The workshop will include participation by the Western States Federal Agency Support Team (WestFAST), which is composed of nine federal agencies. CWCB staff has been invited.

The National Integrated Drought Information System (NIDIS) is also continuing work on the "gaps" report that assess the data and information gaps that exist for proper creation of a drought early warning system for the Upper Colorado River System. This effort is part of the NIDIS Upper Colorado River Pilot Project. Information from this report will be incorporated into the revision of the state drought plan. *(Taryn Hutchins-Cabibi)*

ALLIANCE FOR WATER EFFICIENCY TRACKING TOOL: The OWCDP is investigating using a water conservation tracking tool developed by the Alliance for Water Efficiency (AWE), a national water efficiency non-profit organization. The tool helps water providers track and project savings associated with various water conservation programs and measures and conduct cost-benefit analyses on the same measures. The OWCDP is interested to see if this tool can be used as an aid in developing water conservation plans. *(Kevin Reidy)*

HIGH FLOW PROTOCOL SCOPING ANNOUNCED: Following the Secretary's announcement of a high flow protocol at CRWUA, the Glen Canyon Dam Adaptive Management Work Group met on February 3-4, 2010 in Phoenix, Arizona. The link to the federal register notice is: <http://edocket.access.gpo.gov/2009/E9-31050.htm>. The Bureau of Reclamation is currently accepting scoping comments and Ted Kowalski will be working with the CWCB staff, other basin states, and the Office of the Attorney General to draft comments for submittal to the Bureau of Reclamation. In addition, the Upper Colorado Water Commission may request cooperating agency status, but we are continuing to discuss this possibility. *(Ted Kowalski)*

INTERNATIONAL BOUNDARY WATERS COMMISSIONER SWORN IN: Edward Drusina was sworn in as the United States Commissioner of the International Boundary and Water Commission (IBWC) on January 15, 2010. A copy of the press release regarding Commissioner Drusina, attachment 3, is attached to this report. *(Ted Kowalski)*

U.S.-MEXICO NEGOTIATIONS: In 2010, the U.S. Colorado River Basin states' representatives are continuing to meet with the Mexican Colorado River basin states' representatives, U.S. federal representatives and Mexican federal representatives to explore bi-national water opportunities. The delegations' modeling subgroup continues to explore different scenarios for the creation and use of Intentionally Created Mexican Allocation ("ICMA"). In addition, the delegations' pilot project subgroup is meeting in March and April to further this work. The next bi-national principal meeting will be in mid-April or mid-May, 2010 and Ted Kowalski will continue to keep the CWCB Board informed about these discussions. *(Ted Kowalski)*

YUMA DESALTING PLANT PILOT RUN: The Bureau of Reclamation is continuing its work to operate another pilot run of the Yuma Desalting Plant. This pilot run would operate the plant at 30% capacity for not more than 18 months, at a total cost of \$23.2 million. There is a funding agreement in place between the Bureau of Reclamation and the three funding partners: Southern Nevada Water Authority, the Central Arizona Project, and the Metropolitan Water District of Southern California. These funding partners will contribute \$14 million towards the pilot run. In addition, the IBWC and the Mexican counterpart (CILA) have signed a joint engineering report regarding this project, which provides up to 30,000 acre-feet to be dedicated to flows for the Cienaga de Santa Clara. The source of this water will be shared equally by the U.S., Mexico, and Nongovernmental organizations. The U.S. portion allows non-storable water to count towards the U.S. commitment. The State Department is developing a minute (Minute 316) to govern the pilot run. *(Ted Kowalski)*

~STATEWIDE~

GROUND WATER COMMISSION MEETING: The Groundwater Commission met on February 19, 2010 in Denver, Colorado. The next meeting is scheduled for May 21, 2010 in Denver, Colorado. For more information visit: <http://water.state.co.us/cgwc/> *(Ted Kowalski)*

CSU WATER TABLES: On February 20, 2010, Ted Kowalski, hosted a table at the Colorado State University fundraiser for the CSU Archives. In addition, Ted facilitated the inclusion of Mario Lopez Perez, representing Conagua of Mexico, as the first international table host at the Water Tables event. Thanks to Dr. Reagan Waskom, and the staff of CSU, for including Ted, Mario Lopez, and several of the CWCB staff for this event. *(Ted Kowalski)*

FRONT RANGE CLIMATE CHANGE VULNERABILITY STUDY: The final draft for the Front Range Climate Change Vulnerability Study is currently being reviewed by study participants, including CWCB staff. The study was intended to assess potential changes in the timing and volume of hydrologic runoff for the years 2040 and 2070 as compared with the historical period of 1950-1999. Preliminary results are comparable to those seen in the Colorado

River Water Availability Study. The final report will be submitted this spring to the Water Research Foundation for publication. *(Taryn Hutchins-Cabibi)*

THE “DEALING WITH DROUGHT: ADAPTING TO A CHANGING CLIMATE”

WORKSHOP REPORT: Last fall, the CWCB, in collaboration with Western Water Assessment and NIDIS, held a series of three workshops throughout the state, intended to improve climate literacy of the participants and provided input to the state drought plan. The series was a great success and a report is now available that outlines the findings of these workshops. Please contact Taryn Hutchins-Cabibi at taryn.hutchins-cabibi@state.co.us for more details or a copy of the report. *(Taryn Hutchins-Cabibi)*

WATER CONSERVATION PLANS APPROVED: The Office of Water Conservation & Drought Planning (OWCDP) has approved additional Water Conservation Plans from water providers. They include:

- City of Thornton
- City of Sterling

The OWCDP has determined the Plan to be in accordance with §37-60-126 C.R.S. and the CWCB’s Guidelines for the Office to Review Water Conservation Plans Submitted by Covered Entities. Water providers may proceed with implementation of their Plans.

The OWCDP has received and is evaluating and working with providers on the following Water Conservation Plans:

- Pinery Water and Wastewater District
- Consolidated Mutual Water Company
- City of Lamar
- City of Steamboat and Mount Werner Water District
- Castle Pines Metropolitan District
- City of Lafayette
- Tri-County Water Conservancy District
- St. Charles Mesa Water District
- City of Louisville
- City of Fort Collins
- Town of La Junta
- City of Broomfield

(Ben Wade)

WATER CONSERVATION LEVEL ANALYSIS: The OWCDP is working with Great Western Institute to analyze the conservation levels framework from SWSI I. The purpose is to examine the assumptions that went into the original levels framework, evaluate the conservation savings associated with the levels and then to assess where water providers are at

currently in their conservation efforts. A draft of this work will be coming in the next few months and will be incorporated into the upcoming SWSI update. *(Kevin Reidy)*

COLORADO WATERWISE BEST PRACTICES GUIDEBOOK: The Best Practices (BP) Guidebook is a water efficiency grant project to develop a set of water conservation best practices specific to Colorado. The guidebook will assist water providers with the selection and implementation of effective water conservation programs and measures. A Project Advisory Committee and Stakeholder group, consisting of water professionals and water conservation experts from around the state, was formed to guide the process and review the technical aspects of the project. Over the last few months, a list of best practices has been selected for inclusion and the guidebook is being written at present time. A draft of the final document will be ready by May 2010. The BP Guidebook will also inform the update to SWSI in the form of implementation costs and water savings estimates. *(Kevin Reidy)*

FLOODPLAIN MAP MODERNIZATION/RISK MAP UPDATE:

FY10 projects: CWCB received \$20,000 from FEMA for scoping counties this year for projects to begin in FY2011. The tentatively selected counties are Logan and Las Animas Counties. Logan County scoping meeting was held on January 21, 2010. Las Animas scoping meeting will be scheduled sometime this spring or early summer.

FY09 projects: The South Platte approximate floodplain delineation has been completed and is in review at FEMA. Morgan County Floodplain mapping task and DFIRM database tasks are on schedule.

Prowers County DIRM is now underway. There are three levees to analyze in the county. Work continues on the field survey and topographic data for Prowers and should be completed in early spring.

FY08 projects: Work continues for Gunnison, Montrose, Elbert, and Rio Grande Counties. The floodplain mapping has been completed for Gunnison County. Montrose County draft preliminary maps have been submitted for review. Rio Grande County and Elbert County draft preliminary mapping has been submitted for review. Additional FEMA funding in the amount of \$247,150 was provided to address identified levee issues along the Arkansas River and Fountain Creek in Pueblo County. FEMA has completed their review of the hydrology for Fountain Creek. The results have been distributed and some discussions are taking place between FEMA and stakeholders in regards to the flow differences between the FEMA study and previous studies that were submitted. It is anticipated that the hydraulic analysis and floodplain mapping will continue to progress shortly after all discussions have taken place.

FY07 Counties: La Plata and Summit Counties are nearing the end of the Preliminary phase. Summit County has encountered an issue with the current delineation of Zone D areas. These are areas that have undetermined flood hazards or no flood hazard analyses have been conducted in these areas. It will not affect any property owners or existing flood hazard areas

but the effective maps will be delayed by approximately 3 months due to the re-delineation of Zone D areas. Park County has gone effective in December 2009. La Plata County is expected to have their maps effective in August 2010. Delta County is nearing the end of the preliminary phase and the maps should be effective in July 2010. Teller County and Archuleta County have gone effective since September 2009.

FY06 Counties: Weld County detailed study work continues to progress. Weld County has identified levees in the Town of Evans and Severance. Due to these levees, additional work was needed. The projected preliminary date for Weld County has been pushed back to April 2010. Fremont County preliminary maps should be distributed in mid March or early April. There was a delay due to the review process with FEMA. Clear Creek County will submit draft preliminary maps for review in mid March 2010. The Pueblo County Arkansas River Levee floodplain study is in progress, finalization is still progressing. The hydrology and the methodology used are currently being reviewed by FEMA.

FY05 Counties: Mesa County DFIRM is expected to go effective in June 2010. The Garfield County DFIRM is almost complete. The USGS study that has delayed the project was recently completed and approved. The schedule for Garfield County DFIRM will be revised now that work may continue. It is hopeful that the preliminary maps for Garfield will be ready in the summer of 2010. The Montezuma County DFIRM went effective September 28th 2008.

FY04/03 Counties: All of the Boulder County levees have been identified. The South Boulder Creek Study has been completed and approved. Incorporation of this study into the DFIRM is now complete. FEMA has provided Provisionally Accredited Levees (PAL) agreements for two levees in the County. The scheduled preliminary date for Boulder County has been pushed back to mid March 2010 due to a delay in addressing a comment regarding the CU Campus levee. *(Kevin Houck)*

STATE DROUGHT PLAN: The revision of the state's Drought Response and Mitigation plan is well underway. AMEC Earth and Environmental has been awarded two contracts associated with the revision; one contract to write the plan and create the related resource documents as well as insure compliance with FEMA, and another to conduct a vulnerability assessment on state assets.

Colorado Climate Center is examining the indices we currently use to monitor drought to see if they accurately capture the available information and provide a good picture of what is occurring at any given time throughout the state. They will also be looking at how these indices trigger response at various stages of drought.

In response to the concerns of numerous water providers, CWCB and DWR is working with the Natural Resource Conservation Service (NRCS) to update the Surface Water Supply Index (SWSI) for the first time since the index was created in the early 1980's. The revised index will be a more helpful tool for providers to forecast their water supply situation.

The schedule for completion of the plan has not shifted and we are still on track to have a draft in June and a final product in September of this year. (*Taryn Hutchins-Cabibi*)

COLORADO RIVER DECISION SUPPORT SYSTEM (GENERAL): Colorado's Decision Support Systems (CDSS) is a water management system being developed by CWCB and DWR. The goal of CDSS is to assist in making informed decisions regarding historical and future use of water. Currently there are DSS's in place for the Colorado River and Rio Grande Basins, and the development of the South Platte DSS is underway. (*Ray Alvarado*)

FLOOD DSS: Progress on the FloodDSS continues at a good pace. The data collection effort is complete, with just over half of Colorado's counties contributing data. Most of this data consists of critical infrastructure such as police and fire station locations, schools and hospitals. Riverside has made draft versions of the full scale and smaller topic specific websites, available for CWCB staff to review. Riverside anticipates being able to begin installation and testing of some components on CWCB systems by April. (*Ray Alvarado*)

DARCA WORKSHOP & CONVENTION: The 8th Annual DARCA Convention was held in Durango, Colorado on February 11-12, 2010. Ray Alvarado, Kirk Russell and Anna Mauss attended. The conference was titled, *Agricultural Water: Reinventing Strategies for a New World*. Ray Alvarado made a presentation on the Colorado River Water Availability Study. A Pre-Conference Workshop was held on February 10th titled, *Micro Hydropower Opportunities for Dam Owners and Operators*. The Workshop focused on the feasibility of including a micro hydropower facility on an existing water supply system. Kirk Russell presented information on the state's ability to fund hydropower and the documentation necessary to be considered for CWCB financing. (*Kirk Russell*)

~ARKANSAS RIVER BASIN~

HUERFANO COUNTY INSTREAM FLOW APPROPRIATIONS: In November 2009, the Staff negotiated a settlement with Huerfano County, the Huerfano Water Conservancy District, and other parties that delayed a contested hearing and final action on ISF recommendations for two segments of the Huerfano River and Cucharas Creek to November 2010. Among other things, the stipulation provided additional time for Huerfano County and other contested parties to identify and file for water rights to meet future projected water supply demands. In order to assure progress, staff has been in regular contact with Huerfano County's attorney. As of February 23, 2010, Huerfano County's attorney indicated to CWCB staff that they would provide staff with a substantive update as soon as one becomes available. They also indicated that their clients were making some progress and have had discussions with various landowners and water rights owners concerning reservoir sites and potential changes of water rights. (*Jeff Baessler*)

ARKANSAS RIVER DECISION SUPPORT SYSTEM (ArkDSS): The feasibility study for an Arkansas River Basin Decision Support System (ArkDSS) commenced in late January 2010. The purpose of the feasibility study is to define the ArkDSS's purposes, uses, users, components, data requirements, costs and the schedule required to develop such a system. The results of the feasibility study will be used by the CWCB and DWR for recommending the development of an ArkDSS to the General Assembly.

Interviews of Arkansas Basin water users will begin in March to assess the data and components needed for a decision support system. Also in the early part of this year-long project, existing studies and data will be reviewed and a draft data collection report will be completed by approximately May 2010. Several alternatives will be presented in the summer of 2011, with a proposed alternative identified in the fall of 2010, with a final report completed in early 2011. (*Ray Alvarado*)

~COLORADO RIVER BASIN~

QSA LITIGATION: A number of contracts (referred to as the Quantification Settlement Agreement ("QSA") and related agreements) were signed in October 2003 to reach an overall quantification, settlement and transfer of various Colorado River water rights. There were a number of court actions initiated and cases were coordinated in one proceeding before the Superior Court of California. These cases included, but are not limited to, actions seeking validation of the agreements and CEQA (California Environmental Quality Act) challenges. Since the Court's December ruling (see the Attorney General's Report from the January 2010 Board meeting, pages 5 and 6 of attachment 4) the Court has issued a final ruling, in February, 2010, which is being appealed by various parties. The Upper Colorado River Commission counsel provided a declaration, for attachment to the appellate briefs, recognizing that the litigation does create some uncertainty. A copy of the declaration is attached to this Report, attachment 5. (*Ted Kowalski*)

COLORADO RIVER BASIN STUDY: The Bureau of Reclamation and the seven basin states have completed work on an agreement to implement this supply and demand study, and the study work has begun. The steering committee hopes to hire a contractor in the next several weeks to assist with this work. In addition, the steering committee is meeting on March 12, 2010, and the first public meeting is currently being scheduled. This meeting will likely be held in Las Vegas, Nevada, from 6:00pm to 8:00 pm, PST, at the Southern Nevada Water Authority offices on March 23, 2010. There will be webinar capability. More information is available on the Bureau of Reclamation website: <http://www.usbr.gov/lc/region/programs/crbstudy.html> (*Ted Kowalski*)

UPPER COLORADO RIVER COMMISSION: The Commission has moved the date of its annual summer meeting and it will now hold its annual summer meeting on June 9-10, 2010 in Cheyenne, Wyoming. *(Ted Kowalski)*

UPPER COLORADO RIVER WILD AND SCENIC RIVES STAKEHOLDER

PROCESS: The flurry of meetings has subsided temporarily; however, the Stakeholder Group is scheduling a meeting for March 2010 to try to get this process back on track. *(Ted Kowalski)*

COLORADO RIVER WATER AVAILABILITY STUDY (CRWAS): CRWAS team has completed Phase 1 of the study and the Draft Final Report is on the CWCB website (www.cwcb.state.co.us) for download and review. The public comment period began March 8, 2010, and will have a ninety day period, ending June 7, 2010. The team will hold two workshops; the first in early April in Montrose and the second, early in May in Silverthorne.

Based on the feedback received during the public review period, the team will incorporate comments as appropriate, and then post the completed Phase 1 study. The team is working with the CWCB Board, IBCC and CWCB's Intrastate Water Management & Development Section in developing goals and objectives and data requirements for Phase 2, so a scope of work can be completed. *(Ray Alvarado)*

LOWER COLORADO RIVER WILD AND SCENIC RIVERS PROCESS: The Lower Colorado River Alternatives Stakeholder Group continues to meet monthly in Grand Junction to meet the aggressive BLM schedule. Rebecca Mitchell, of the Executive Director's Office, continues to work on this process and the Stakeholder Group subgroups have made significant progress. Additional information is available at:

http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/grand_junction_field/PDF.Par.3668.File.dat/Final%20Wild%20and%20Scenic%20Eligibility%20Report%20original%20signature%20web.pdf *(Ted Kowalski)*

~GUNNISON RIVER BASIN~

UNCOMPAHGRE WILD AND SCENIC COMMENT PERIOD EXTENDED: The Uncompahgre Field Office is revising its Management Plan, and as part of this process, the field office issued a draft eligibility report in December, 2009. The BLM Field Office has extended the date on which they will accept comments on the draft report, until March 29, 2010. The draft report includes 35 segments of creeks and rivers that are listed as eligible for wild and scenic designation, including certain segments of the Gunnison River, the San Miguel River, and the Dolores River. Ted Kowalski submitted comments on February 26, 2010, on behalf of the CWCB Board, and they are attached to this report (see attachment 6). *(Ted Kowalski)*

~PLATTE RIVER BASIN~

PLATTE RIVER RECOVERY PROGRAM: The Platte River Recovery Implementation Program (“Program”) held its first Adaptive Management Workgroup Annual Symposium on February 17-18, 2010 in Denver, Colorado. This event allows for the interaction of all of the various scientists, engineers, and consultants working on the Program, and to see if there are efficiencies and interactions that can and should be realized. The Governance Committee held its last meeting in Kearney, Nebraska, March 9-10, 2010. The next meeting will be held in Kearney, Nebraska on June 8-9, 2010. For the remainder of 2010, the Governance Committee will meet quarterly. The Program continues to acquire lands and make progress on its adaptive management and water goals. For more information, please visit: www.platteriverprogram.org. (Ted Kowalski)

SOUTH PLATTE RIVER O&M INSPECTION: For many years, the CWCB has been the local sponsor for a flood control project (Project) in the South Platte River from just downstream of Chatfield Reservoir to the confluence with Bear Creek. This stretch of river accommodates high volume releases out of the reservoir. The CWCB, as the coordinating non-federal sponsor, signed Flood Control Project Agreements as part of the Corps’ PL 84-99 Inspection of Completed Works Program. As part of those agreements, the project is annually inspected by the U.S. Army Corps of Engineers - Flood Readiness Branch in Omaha, Nebraska. Minimally acceptable ratings in recent inspections have led to significantly increased expenditures by staff. In fact, the CWCB has spent approximately \$365,000 of state funds and \$150,000 in Urban Drainage and Flood Control District (UDFCD) funds since 2007 removing 90% of the vegetation on sandbars and within the riprap within the project reach. It is unlikely that the UDFCD will continue cost-sharing with the CWCB for sediment removal. CWCB staff has been approved for \$100,000 in FY11 Severance Tax Funds and there is \$110,000 for FY10 in the original 1979 project authorization account.

The most recent inspection occurred on February 17, 2010. Although the report hasn’t been released yet, it is apparent through conversations with Corps staff, that the Corps will remain firm on a 100% vegetation removal policy, meaning that significant additional work will need to be performed. Upcoming Corps requests may include the need for a sediment removal plan from the CWCB for a four mile river reach and major vegetation removal work at the confluence of Bear Creek. The Corps contends this is strictly a flood control channel, whereas the CWCB considers this a multi-objective river corridor with a balance of activities, such as recreation, habitat, local government needs, in serving a multitude of constituents and communities.

The Confluence of Bear Creek is widely regarded as important wildlife habitat and a natural area, and is bordered by golf courses on both sides. To further complicate things, the Project design reach, the CWCB parcel ownership, and state/federal agreements all fall along varying

reaches of the River. The Project reach is not well defined and could potentially lead to the CWCB conducting costly river work in an area with no proven landownership.

Due to a recent cut in funding for maintenance activities during the recent budget crisis, staff has begun a reevaluation of the various costs and benefits involved in staying in the PL 84-99 Program. The agreements and O&M Manual state that in the event of a flood disaster, the Corps will help repair the Project once all state and local resources are exhausted, which is the primary benefit promoted by the Corps for participation in the program. However, staff believes that the UDFCD and CWCB will likely have the resources to inspect and repair the Project after a flood event. Although this is considered a flood control project, the 100-year flood event has been evaluated to stay within the channel through this reach, even if vegetation and sediment removal are scaled back. Although freeboard may be affected, floodplain maps should not be affected by participation in the PL84-99 Program. However, staff believes that unless funding is restored, and even increased, activities required by the Corps during their annual inspections will not be able to be performed to their satisfaction. A major drawback to voluntary withdrawal from the program would be the potential political perception by the Corps and the public that the State didn't honor state/federal agreements signed for a visible public safety project. In light of the budget crisis and lack of adequate funding for ongoing maintenance activities mandated by the Corps, CWCB staff would like to continue an investigation and conversations as to continued participation within this Corps program. (*Joe Busto*)

SOUTH PLATTE DECISION SUPPORT SYSTEM (SPDSS): The alluvial groundwater modeling is moving forward into the calibration phase of that effort, with a final calibrated alluvial groundwater model being done in early 2010. The calibration of the model has unique challenges because of the scope and breadth of the basin and hydrogeology. However, these challenges are being addressed as they come forward with the final product being a calibrated basin wide alluvial groundwater model for the South Platte. (*Ray Alvarado*)

CHATFIELD RESERVOIR REALLOCATION PROJECT: A delegation of Chatfield Coalition members, including Tom Browning from the CWCB staff, traveled to Washington, D.C. during March 2-4, 2010, to meet with the Headquarters Office of the U.S. Army Corps of Engineers, the Office of the Assistant Secretary of the Army (Civil Works), all nine offices of the Colorado Congressional Delegation, and the House and Senate appropriations offices. Messaging included the need to quickly and efficiently complete the Draft EIS in preparation for public review, the need for \$225,000 FY11 federal dollars allocated to the Corps to complete all necessary tasks and obtain a Record of Decision, and the need to obtain implementation guidance from Corps HQ regarding the authorizing language contained in the 2009 Omnibus appropriations bill. The Corps has indicated their strong desire to have the Draft EIS released for public comment in June 2010. (*Tom Browning*)

~SOUTHWEST RIVER BASINS~

RIVER PROTECTION WORKGROUP: The River Protection Workgroup (“RPW”) has concluded the work on the Hermosa Creek sub-basin and issued a final report. The Hermosa Creek Workgroup continues to develop legislative language on the land protections. The next sub-basin, the San Juan River basin, began work on February 25, 2010. This meeting was well attended and there was significant interest in pursuing alternatives to a wild and scenic rivers suitability determination. The next public meeting will be held in Pagosa Springs from 5:30 pm to 8:30 pm on March 25, 2010. *(Ted Kowalski)*

~AGENCY UPDATES~

WATER PROJECT LOAN PROGRAM: On February 1, 2010 CWCB received three applications for loans to be considered at the March Board meeting. Due to the cancellation of the CWCB Board meeting, these loans will be presented to the Board in May 2010, for consideration. The borrowers and loan amounts are as follows:

- (1) City of Monte Vista - \$924,120 for the purchase of shares of Anderson Ditch water rights and the Rio Grande Ditch No. 1 water rights to augment current water use by the City
- (2) Las Animas Consolidated Canal Company - \$76,500 for the Las Animas Consolidated Diversion Dam Rehabilitation Project
- (3) Consolidated Extension Canal Company - \$178,500 for the Las Animas Consolidated Diversion Dam Rehabilitation Project *(Kirk Russell)*

GOVERNOR’S WATER AVAILABILITY TASK FORCE (WATF): Please see included February 2010 Drought Update, attachment 7, for information on current drought conditions throughout the state. The next WATF meeting will be a joint meeting with the Flood Task Force and is scheduled for March 25, 2010, at the Colorado Division of Wildlife Headquarters. Please check the website below for additional information. *(Ben Wade)*

(<http://cwcb.state.co.us/Conservation/DroughtPlanning/WaterAvailabilityTaskForce/>)

WATER EFFICIENCY GRANT FUND PROGRAM UPDATE: The OWCDP has awarded two additional grants through the Water Efficiency Grant Fund to the following water providers:

- (1) Security Water District: \$23,265 to develop a Water Conservation Plan

- (2) East Cherry Creek Valley Water & Sanitation District: \$29,850 to develop a Water Conservation Plan (Ben Wade)

ALTERNATIVE AGRICULTURAL TRANSFER METHODS WORKSHOP (February 18, 2010): Part of the CWCB statewide update of water supply needs will include a report summarizing the projects and findings of the ATM projects. A key element of this report is to attempt to answer the question: What would it take to make an alternative agricultural transfer program work in Colorado? To address this question, on February 18 2010, the CWCB convened an all-day workshop to discuss the barriers preventing alternative agricultural transfer methods from being more commonplace in Colorado and more importantly, what needs to occur to overcome these barriers. The meeting was well attended by representatives of DNR, DWR, water attorneys, water engineers, CU/CSU, water districts, municipalities, ATM project sponsors, CWCB, and non-profit organizations. Alex Davis opened the meeting and indicated that DNR is very supportive of the grant program and the exploration of the various alternative methods to permanent transfers of irrigation water. The participants were asked to list the various barriers that are preventing these methods from being commonly used. While many barriers were identified, two major issues were discussed and are described below. The first issue is the farmers' uncertainty of the value of his water rights. A change of use for a water right from agriculture to municipal use can be very expensive for which the cities are likely to pay for after a water right is purchased from the farmer. The group believes that farmers would be more apt to enter into other types of transactions if the water transfer process was more streamlined to lower costs/time and increase certainty for participants. This may include the determination of a presumptive consumptive use for a particular ditch system. This may also include upfront engineering and legal work to provide analysis of an entire ditch system. One direct result from this meeting was the formation of a subcommittee to examine this topic in detail. The subcommittee has not scheduled its first meeting but will likely be in April 2010.

The second issue is that there is not clear guidance on what is allowable under Colorado water law and what is not. For instance, the group thought it would be helpful if the State could provide guidance on the transfer of a portion of a farmer's historic consumptive use (conserved consumptive use water), as distinguished from saved or salvaged water. Currently there is uncertainty on how a transfer of a portion of historic consumptive use would be administered by the division engineer's office. (*Todd Doherty*)

WATER SUPPLY RESERVE ACCOUNT CRITERIA AND GUIDELINES: Each year a subcommittee, comprised of CWCB members (Barbara Biggs, Eric Wilkinson and Travis Smith) and IBCC members (Melinda Kassen, Wayne Vanderschuere and John Porter) convenes to consider revisions to the Water Supply Reserve Account Criteria and Guidelines. On December 2, 2009, the subcommittee met and agreed upon several amendments. The proposed amendments will be presented to the IBCC for approval at their March 2010 meeting and to the CWCB at their May 2010 meeting. A summary of the amendments are as follows:

- **Funding Considerations:** Due to the funding shortfalls experienced by the WSRA program over the last several years, and the fact that the Statewide Accounts balance is nearly depleted, and all of the Basin Accounts have positive balances, the subcommittee agreed to recommend retaining the current allocation between the basin and statewide accounts at 27% and 73% respectively. In addition, due to the distribution of Severance Tax “Tier 2” Programs, the subcommittee recommends that Statewide Account requests be reviewed once a year at the September CWCB meeting. This will help ensure that the best proposals are funded on a competitive basis.
- **Statewide Account:** Recognizing that the evaluation criteria for the Statewide Account were broad in nature, the subcommittee proposed changes to provide more specificity for projects considering funding. The group proposes three major tiers or rankings to assist the Basin Roundtables and the CWCB in their review and ranking of proposals. Preference will be given to projects that meet one or more criteria from each of the three “tiers” or rankings. Each “tier” is grouped in level of importance. For instance, projects that meet Tier 1 criteria will outweigh projects that only meet Tier 3 criteria. The three tiers are as follows:
 - (1) Tier 1: Promoting Collaboration/Cooperation and Meeting Water Management Goals and Identified Water Needs
 - (2) Tier 2: Facilitating Water Activity Implementation
 - (3) Tier 3: Water Activity Addresses Issues of Statewide Value and Maximizes Benefits. In addition, requests for Statewide Account funds must obtain a letter of support from another basin roundtable (in addition to a letter from the sponsoring basin) except if the proposal will help implement an Identified Project or Process (IPP) identified in the Basin Roundtable’s needs assessment. The subcommittee also deemed several items redundant or unnecessary in the evaluation of grant proposals.
- **Basin Accounts:** Threshold Criteria for the Basin Account will be strengthened to relate directly to solutions for the Basin Roundtable’s Consumptive and/or Non-consumptive Needs Assessment. If a Basin Roundtable does not have a completed needs assessment then the CWCB will not consider grant applications from that basin except for applications that help complete the needs assessments.

If approved at the May 2010 CWCB meeting, grants presented to the CWCB in July 2010 will be subject to these proposed changes. *(Todd Doherty)*

RECENTLY DECREED ISF WATER RIGHTS: On January 15, 2010, the Division 5 Water Court decreed and instream flow water right to the CWCB on Beaver Creek in Case No. 08CW097 for 0.45 cfs (April 1 – September 30), with an appropriation date of January 23, 2008. This right is an increase to an existing ISF flow right decreed in case 5-86CW206 for 1.5 cfs (January 1 – December 31) with an appropriation date of March 14, 1986. The upstream

terminus is the confluence with Spring Creek and the lower terminus is the confluence with the Colorado River. This ISF Reach is approximately 2.75 miles long and flows through part of Grand County. (Rob Viehl)

INSTREAM FLOW AND NATURAL LAKE LEVEL PROGRAM – SUMMARY OF

RESOLVED CASES: The Board’s ISF Rule 8i. states that: “In the event the pretrial resolution includes terms and conditions preventing injury or interference and does not involve a modification, or acceptance of injury or interference with mitigation, the Board is not required to review and ratify the pretrial resolution. Staff may authorize its counsel to sign any court documents necessary to finalize this type of pretrial resolution without Board ratification.”

Staff has resolved issues of potential injury in the following water court cases and authorized the Attorney General's Office to enter into stipulations that protect the CWCB’s water right:

(1) Case No. 1-07CW147 -- Application of Donna J. Nelson, et al. & North Fork Associates and Mountain Mutual Reservoir Company: The Board ratified this statement of opposition at its September 2007 meeting. The Board’s main objective in filing the statement of opposition in this case was to ensure that the Applicants’ plan for augmentation and exchange does not injure the Board’s instream flow water rights on Four Mile Creek and the Middle Fork South Platte River. Applicants’ proposed plan for augmentation and exchange may not replace depletions in the same amount, timing or location at which they occur. Staff, in cooperation with the Attorney General’s Office, has negotiated a settlement to ensure that the CWCB’s instream flow water right will not be injured.

The Board holds the following instream flow water rights that could have been injured by this application:

CWCB Case No.	<i>Stream/Lake</i>	Amount (cfs)	Approp. Date	Watershed	County
1-76W8224	Four Mile Creek	8	1/14/1976	South Platte Headwaters	Park
1-80CW067	Middle Fork South Platte River	16/8	1/30/1980	South Platte Headwaters	Park

The CWCB and the Applicants have agreed to the entry of a decree that will prevent injury to the Board’s ISF water rights on Four Mile Creek and the Middle Fork South Platte River. The Applicants have agreed to the following terms and conditions:

- The Colorado Water Conservation Board (“CWCB”) holds an instream flow right on Four Mile Creek, decreed in Case No. 1-76W8224, for 8 cfs, and on the Middle Fork South Platte River, decreed in Case No. 1-80CW067, for 16 cfs (summer) and 8 cfs (winter), which rights were decreed prior to the application filed in this case.

- In order to prevent injury to the CWCB's instream flow rights, the exchanges shall not be conducted when the CWCB places a call for water under the instream flow right decreed in Case No. 76CW8224, that is recognized and being administered by the Division Engineer.
- Each exchange will be administered with a priority date of June 30, 2007, at a maximum flow rate of 0.002 of a cubic foot per second. To the extent that releases under MMRC's water rights cannot replace out-of-priority depletions under this plan for augmentation at the point of injury, the applicants shall either physically transport augmentation water by tank truck for delivery to the stream system at a location upstream of the point of injury, release water from one or more onsite storage containers or cease diversions under the wells described herein for other than in-building uses.
- Due to the small volume of annual stream depletions projected to occur from the water operations described herein, replacement of out-of-priority depletions may be aggregated. The rate and timing of an aggregated delivery of replacement water and the subsequent diversion of that water by downstream water users shall be determined by the Division Engineer. No water user shall physically divert such aggregated release from Four Mile Creek at any point upstream of the downstream terminus of the instream flow water right decreed in Case No. 76CW8224.
- Upon notification from the State water administration officials that the instream flow water right decreed in Case No. 76CW8224 is the calling right on Four Mile Creek, applicant shall, within twenty-one (21), days after receiving such notice, cause the delivery of an aggregated volume of water, equal to thirty days of depletions then occurring under this augmentation plan, to a point on Four Mile Creek that is acceptable to the CWCB. Applicant shall continue making monthly aggregated deliveries of water to Four Mile Creek until the State water administration officials confirm that the instream flow water right is again satisfied. If the applicants are unable to deliver water to Four Mile Creek to satisfy a call by the instream flow water right, the Division Engineer shall curtail water uses associated with this plan for augmentation until such time as the Applicants prove to the satisfaction of the Division Engineer that they have the ability to make such deliveries, either by resuming the physical transportation of augmentation water by tank truck or by releasing water from an on-site storage container.
- The Court will retain jurisdiction on the question of injury to the vested water rights and decreed conditional water rights of others for a period of five years from the entry of this decree.

(2) Case Nos. 4-06CW203 – Russell A. Gerdin (Case Withdrawn): The Board ratified the statements of opposition filed in these cases at its January 2007 meeting. The Board's main

objective in filing the statement of opposition in this case was to ensure that the Applicant's plan for augmentation does not injure the Board's instream flow water rights on Blue Creek and Little Blue Creek. Applicants' proposed plan for augmentation may not replace depletions in the same amount, timing or location at which they occur.

The Board holds the following instream flow water rights which could have been injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
4-83CW207	Little Blue Creek	2	7/7/1983	Gunnison River	Gunnison
4-98CW227	Little Blue Creek	1.5/0.5	1/29/1998	Gunnison River	Gunnison
4-84CW389	Blue Creek	7	5/4/1984	Gunnison River	Gunnison

The Applicant has voluntarily withdrawn his application, and the Water Court dismissed the case without prejudice.

(3, 4) Case Nos. 5-06CW279 & 5-08CW204 – Application of William H. Thomas & Gunsight Pass Ranch (Cases Dismissed): The Board ratified the statements of opposition filed in these cases as its March 2007 meeting. The Board's main objective in filing the statement of opposition in this case was to ensure that the Applicant's proposed change of water rights and plan for augmentation do not injure the Board's instream flow water rights on Antelope Creek. Applicants' proposed plan for augmentation may not replace depletions in the same amount, timing or location at which they occur, and the proposed change of water rights may result in an expansion of use.

The Board holds the following instream flow water right that could have been injured by this application:

CWCB Case No.	Stream/Lake	Amount (cfs)	Approp. Date	Watershed	County
5-86CW225	Antelope Creek	1.5	3/14/1986	Colorado River	Grand

In both of these cases, the applicant failed to initiate a telephone status conference, and failed to respond to the Court's dismissal notice. The Water Court dismissed both cases without prejudice for failure to prosecute.

(5) Case No. 6-08CW090 -- Application of Shell Frontier Oil & Gas (case is likely to be withdrawn): The Board ratified the statement of opposition filed in this case at its March 2009 meeting. The Board's main objective in filing the statement of opposition was to ensure that the claims for surface water and storage rights from the Yampa River do not impact the CWCB's water acquisition agreements for 5,000 acre-feet of water and storage space in Elkhead Reservoir, decreed

in Case No. 02CW106 for in-river fish habitat and river flow maintenance and enhancement uses in furtherance of the Upper Colorado River Basin Endangered Fishes Recovery Program. Although no documents appear to have been filed with the court yet, Staff recently received communication from the applicant's attorney indicating,

"After much deliberation, Shell has determined to withdraw its application and dismiss its claims for conditional water rights in [08CW090]. However, the withdrawal of the Yampa water rights application should not be construed as an indication that Shell is pulling out of oil shale development. Shell intends to continue its oil shale research and development activities with the ultimate goal of creating a commercial oil shale recovery operation that is economically viable, environmentally responsible and socially sustainable."

(6) Case No. 7-06CW110 -- Application of Town of Rico: The Board ratified this statement of opposition at its March 2007 meeting. The Board's main objective in filing the statement of opposition in this case was to ensure that the Applicants' change of water rights does not injure the Board's instream flow water rights on the Dolores River. The applicant's proposed upstream alternate points of diversion to tributary wells and out-of-priority diversion from those wells without adequate augmentation and appropriate terms and conditions may injure the Dolores River instream flow water rights. Staff, in cooperation with the Attorney General's Office, has negotiated a settlement to ensure that the CWCB's instream flow water rights will not be injured.

The Board holds the following instream flow water rights that could have been injured by this application:

CWCB Case No.	<i>Stream/Lake</i>	Amount (cfs)	Approp. Date	Watershed	County
7-84CW284	Dolores River	20	7/13/1984	Upper Dolores	Dolores
7-84CW289	Dolores River	35/25	7/13/1984	Upper Dolores	Dolores
7-84CW293	Dolores River	50/30	7/13/1984	Upper Dolores	Dolores

The CWCB and the Applicants have agreed to the entry of a decree that will prevent injury to the Board's ISF water rights on the Dolores River. The Applicants have agreed to the following terms and conditions:

- Rico acknowledges that the CWCB holds an instream flow water right to preserve the natural environment to a reasonable degree, which water right is located in the reach of the Dolores River where Rico's proposed well field is located. Said instream flow water right was adjudicated in the amount of 20 cfs in Case No. 84CW284 with an appropriation date of July 13, 1984, which priority is senior to the water right to be adjudicated to the Rico well field in this case.

- Rico has included the proposed North Rico Alluvium Well Field in the plan for augmentation adjudicated to the Dolores Water Conservancy District in Case No. 95CW104. In that case, the Water Court concluded that depletions from “authorized diversions” participating in the Dolores Water Conservancy District’s plan for augmentation “shall be allowed and shall not constitute injury to a CWCB instream flow right” provided all such “allowed deminimis depletions” would not exceed 1% of the decreed instantaneous flow rate for the CWCB instream flow water right for a stream reach affected by a proposed authorized diversion. (Paragraph 8.F.(2) of 95CW104 Decree.) The parties agree that the provisions of the decree in Case No. 95CW104 are res judicata and not subject to re-litigation in this case.
- In order to assure that depletions from Rico’s proposed well field, when considered cumulatively with the depletions from other authorized diversions within the instream flow reach decreed in Case No. 84CW284 do not exceed the depletion allowance in the 95CW104 stipulation and decree, Rico has agreed to the following limitations:
 - a. Rico shall limit the diversions from its well field to 80 gallons per minute whenever the minimum instream flow water right of the CWCB decreed in Case No. 84CW284 is not satisfied.
 - b. For the purpose of administering the DWCD augmentation plan in Case No. 95CW104, Rico’s well diversions shall be considered fully depletive within the reach of the minimum instream flow right decreed in Case No. 84CW284 (i.e., no credit will be recognized for return flow in that reach).
 - c. Rico shall maintain its wells in good standing as authorized diversions under the DWCD augmentation plan decreed in Case No. 95CW104.
- The CWCB acknowledges that the DWCD has included the Town of Rico water service area and the Rico well field in its plan for augmentation in Case No. 95CW104 pursuant to a water agreement between DWCD and Rico dated October 4, 2005. Further, pursuant to resolution passed by DWCD at its regular meeting on November 12, 2009, DWCD has approved Rico’s proposal to use up to 80 gpm or 0.178 cfs of the depletion allowance in the 84CW284 instream flow reach as set forth in the proposed decree attached hereto.
(*Kaylea White*)

2011 INSTREAM FLOW APPROPRIATIONS: Staff is noticing the following 26 instream flow recommendations for possible inclusion into the Instream flow and Natural Lake Level Program in 2011. Although, staff did not hold an ISF workshop this year, Trout Unlimited sent staff recommendations for two stream segments tributary to Muddy Creek in Division 5, and staff is continuing to process 24 recommendations from previous years that were held back due to the need for additional data and/or public discourse. See chart on following pages. (*Jeff Baessler*)

Division	Stream Name	County (ies)	Recommender(s)
1	Coal Creek <i>(Boulder County Open Space Boundary to Louisville Wastewater Treatment outfall)</i>	Boulder	City of Louisville, CDOW
1	Coal Creek <i>(to Louisville Wastewater Treatment outfall to Lafayette pumping station #2)</i>	Boulder	City of Louisville, CDOW
2	Gibson Creek <i>(headwaters to Verde Creek)</i>	Custer	CDOW
2	Beaver Creek <i>(East Beaver Creek to Unnamed Tributary)</i>	Fremont	CDOW
2	East Beaver Creek <i>(Gould Creek to Beaver Creek)</i>	Fremont	CDOW
2	West Beaver Creek <i>(Douglas Gulch to East Beaver Creek)</i>	Fremont	CDOW
2	Baker Creek (this recommendation will not move forward until after January 2013) <i>(headwaters to USFS Boundary)</i>	Huerfano	CDOW
2	Bonnett Creek <i>(headwaters to USFS Boundary)</i>	Huerfano	CDOW
2	Chaparral Creek <i>(headwaters to USFS Boundary)</i>	Huerfano	CDOW
2	Dodgeton Creek <i>(headwaters to USFS Boundary)</i>	Huerfano	CDOW
4	Tabeguache Creek <i>(unnamed trib to Forest Service Boundary)</i>	Montrose	USFS
4	North Fork Tabeguache Creek <i>(headwaters to Tabeguache Creek)</i>	Montrose	USFS
4	Red Canyon Creek <i>(headwaters to Horsefly Creek)</i>	Montrose	USFS
4	San Miguel River <i>(Calamity Draw to confl Dolores River)</i>	Montrose	BLM, CDOW
5	Eagle River (ISF Increase) <i>(confl Cross Creek to confl Gore Creek)</i>	Eagle	Town of Minturn, CDOW
5	Colorado River <i>(Blue River to Piney River)</i>	Eagle/ Grand	CDOW
5	Colorado River <i>(Piney River to Eagle River)</i>	Eagle/ Grand	CDOW

5	Colorado River <i>(Eagle/Grand County Line to Eagle River)</i>	Eagle	Eagle County
5	Little Green Creek <i>(headwaters to confl Muddy Creek)</i>	Grand/ Routt	TU
5	Unnamed tributary to Muddy Creek <i>(headwaters to confl Muddy Creek)</i>	Grand/ Routt	TU
6	Moeller Creek <i>(headwaters to confl Fawn Creek)</i>	Rio Blanco	CDOW
6	Wheeler Creek <i>(Headwaters to South Fork Big Creek)</i>	Jackson	BLM
6	North Fork North Platte River <i>(Headwaters to headgate Little Nellie Ditch)</i>	Jackson	BLM
6	South Fork Big Creek <i>(confl Wheeler Creek to Colorado-Wyoming Border)</i>	Jackson	BLM
6	Piceance Creek <i>(confl with Dry Fork to Confl with White River)</i>	Rio Blanco	BLM, CDOW
6	Yellow Creek <i>(Springs in NWNE S12, T1N R98W, 6PM to confl White R.)</i>	Rio Blanco	BLM, CDOW

~ATTACHMENTS~

- 01 **Deminimis Cases**
- 02 **Design and Construction Status Report**
- 03 **International Boundary Waters Commissioner Sworn In**
- 04 **Quantified Settlement Agreement**
- 05 **Declaration of Jane Bird**
- 06 **CWCB Wild and Scenic Eligibility Report Comments**
- 07 **February 2010 Drought Update**
- 08 **News Article – February 24, 2010 Denver Post Business Section**

Director's Report Attachment – March 11, 2010 Meeting
Stream and Lake Protection Section De Minimis Cases

Attachment 1

The following table summarizes the applications that have the potential to injure the Board's instream flow water rights, but their impacts are considered de minimis. In each of these cases, the cumulative impact to the Board's rights is 1% or less. Pursuant to ISF Rule 8(e) (the de minimis rule), staff has not filed Statements of Opposition in these cases and has provided the required notification to the Division Engineer and applicants.

Case No.	Applicant	Stream/ Case Number	ISF Amount	Percent Injury	Cumulative % Injury	Previous Cases
2-09CW145	Diamondback Ranch LLC	South Beaver Creek / 2-79CW115	2cfs (summer) 2 cfs (winter)	0.0054% 0.0021%	0.0244% 0.0163%	1

Colorado Water Conservation Board
Design and Construction Status Report
Attachment 2

Mar-10

Attachment 2							New	Design	Construction		
Applicant/Borrower	Project	County	Loan/Grant Amount	Size	Annual Yield (AF)	Storage (AF) Created	Percent Compl.	Start	End	Percent Compl.	
Projects Completed in FY 2008-2009											
1	East Mancos Highline Ditch Company	Ditch Rehabilitation Project - Pipeline	Montezuma	\$ 904,000	30,360 LF	869		100%	Nov-07	Nov-09	100%
2	Headgate 135 Lateral, Inc.	Ditch Rehabilitation - Pipeline	Mesa	\$ 262,200	4,800 LF	1,000		100%	Oct-08	Nov-09	100%
3	Silt Water Conservancy District	System Rehabilitation Project	Garfield	\$ 1,019,700	18,000 AF	18,000		100%	Nov-05	Dec-09	100%
4	WRCC, Inc.	Windsor Dam and Spillway Rehabilitation	Larimer	\$ 1,285,730	35,000 AF	35,000		100%	Jun-08	Dec-09	100%
5	Center of Colorado Water Conservancy District	Tingle Reservoir Construction	Park	\$ 454,500	400 AF	400	400	100%	Sep-08	Oct-09	100%
Total =			\$ 3,928,130	Total =	55,269	400					
Projects Under Construction											
1	Grand Mesa Reservoir Company	Grand Mesa Reservoir No. 1 & 9 Rehabilitation	Mesa	\$ 200,000	1,000 AF	1,000	200	100%	Jul-03	Jun-10	75%
2	New Cache La Poudre Irrigation Company	Construct 2 New Reservoirs and Pipeline	Weld	\$ 7,200,000	4,500 AF	4,500	4,500	100%	Jun-05	Jan-14	99%
3	Orphan Wells of Wiggin, LLC	Well Augmentation Project	Morgan	\$ 1,037,700	6,000 AF	6,000		100%	Nov-03	On-hold	95%
4	Central Colorado Water Conservancy District	Water Rights and Gravel Pit Construction	Adams/Weld	\$ 20,000,000	12,300 AF	12,300		100%	Nov-03	May-10	90%
5	Dolores Water Conservancy District	WETPACK	Montezuma	\$ 4,700,000	6,000 AF	6,000		100%	Oct-04	Payoff	50%
6	Parker Water and Sanitation District	Rueter-Hess Reservoir Project	Douglas	\$ 15,000,000	16,200 AF	16,200	16,200	100%	Jul-04	Jul-10	75%
7	Mancos Water Conservancy District	Inlet and Outlet Canal Rehabilitation	Montezuma	\$ 5,486,531	15,840 LF	9,000		60%	Jan-04	Jan-14	65%
8	Upper Arkansas Water Conservancy District	Reservoir Rehabilitation	Chaffee/Custer	\$ 3,520,000	500 AF	500	200	100%	Jun-05	Jul-10	95%
9	Debeque, Town of	Raw Water Distribution System	Mesa	\$ 252,500	3,000 LF	710		100%	Mar-07	De-author.	100%
10	Union Ditch Company	Well Augmentation Project	Weld	\$ 312,595	206 AF	206		75%	Sep-06	May-10	80%
11	Bijou Irrigation District	Empire Reservoir Rehabilitation - Dam Rehab.	Morgan/Weld	\$ 2,408,850	19,900 AF	19,900	2,682	100%	Nov-07	Feb-11	85%
12	Lower Poudre Augmentation Company	Reservoir and Water Rights Purchase	Larimer/Weld	\$ 3,104,053	657 AF	657		100%	Oct-07	May-10	65%
13	Bull Creek Reservoir Company	Reservoir Rehabilitation Project	Mesa	\$ 1,212,000	900AF	900	900	100%	Jul-08	Oct-10	95%
14	Aurora, City of	Raw Water Distribution System	Adams/Douglas	\$ 75,750,000	33 miles	10,000		100%	Jan-08	Oct-10	90%
15	Overland Ditch and Reservoir Company	Overland Reservoir Rehabilitation	Delta	\$ 1,130,000	6,200 AF	17,000	971	95%	May-08	Nov-10	5%
16	Montezuma Valley Irrigation Company	May Lateral Pipeline	Montezuma	\$ 5,292,400	5 Miles	128,000		100%	Nov-07	May-10	95%
17	Platte Valley Irrigation Company	Equalizer Reservoir Project	Weld	\$ 2,388,650	431 AF	52,401	431	100%	Apr-10	May-11	5%
18	Greeley Irrigation Company	Greeley Canal No. 3 Rehabilitation	Wled	\$ 2,233,867	18,000 AF	18,000		90%	Feb-08	Jul-10	85%
19	Henrylyn Irrigation District	Horse Creek & Prospect Reservoir Rehabilitation	Weld	\$ 2,184,327	13,850 AF	13,850	3,000	100%	Nov-08	Mar-10	85%
20	New Salida Ditch Company	Ditch Rehabilitation	Chaffee	\$ 365,620	300 L.F.	7,000		100%	Oct-09	Mar-10	95%
21	Wood Lake Mutual Water and Irrigation Company	Angel Lake Outlet Repair	Weld	\$ 212,706	424 AF	848	100	100%	Sep-08	May-10	5%
22	Granby Ditch and Reservoir Company	Granby No. 12 Dam Rehabilitation Project	Delta	\$ 254,520	838 AF	2,000	250	100%	Jun-09	Mar-10	95%
23	Farmers Pawnee Canal Company	Ditch Flow Control Structures	Logan	\$ 227,250	27,260	27,260		100%	Oct-08	Mar-10	95%
24	North Sterling Irrigation District	North Sterling Reservoir Rehabilitation	Logan	\$ 1,094,840	74,590 AF	82,207		100%	Sep-09	Mar-10	90%
25	Water Supply and Storage Company	Ditch and Outlet Rehabilitation	Larimer/Weld	\$ 843,500	100 L.F.	55,000		100%	May-09	Apr-10	95%
26	Republican River Water Conservation District	Compact Compliance Pipeline	NE. Colo	\$ 60,600,000	15,000 AF	15,000		90%	Nov-08	Nov-10	5%
27	Ogilvy Augmentation Company	Well Augmentation	Weld	\$ 1,010,808	60 AF	60		60%	Dec-08	May-10	60%
28	Boulder White Rock Ditch and Reservoir Company	Panama Reservoir Outlet Rehabilitation	Boulder/Weld	\$ 2,864,164	300 L.F.	12,000	2,600	100%	Oct-09	May-10	75%
29	Snowmass Water and Sanitation District	Zeigler Reservoir Water Management System	Pitkin	\$ 1,952,805	1,800 AF	1,800		100%	Sep-09	May-10	75%
30	Farmers Reservoir and Irrigation Company	Milton Reservoir and Barr Lake Improvement Proj.	Adams/Weld	\$ 3,535,000	64,900 AF	125,000		100%	Oct-09	Jan-11	35%
31	Raymond Dairy, Incorporated	Robert Raymond Concrete Ditch Rerconstruction	Mesa	\$ 63,950	2,500 L.F.	386		100%	Nov-09	Mar-10	75%
32	Lower Latham Reservoir Company	Well Augmentation Project	Weld	\$ 3,811,573	5,705 AF	5,705		100%	Nov-09	May-11	40%
33	Trinchera Reservoir Company	Smjth Reservoir Rehabilitation Project	Costilla	\$ 606,000	5,000 AF	26,700	1,100	100%	Nov-09	Mar-10	95%
34	Pagosa Area Water and Sanitation District	Dry Gulch Reservoir Land Acquisition	Archuleta	\$ 11,217,060	35,000 AF	35,000	35,000	n/a	Nov-08	Mar-20	n/a
Total =			\$ 242,073,269	Total =	713,090	68,134					
Projects Under Design											
1	Supply Irrigating Ditch Company	Knoth Reservoir Dam Rehabilitation	Boulder	\$ 1,515,000	4,800 AF	4,800	400	95%	Jan-10	On-hold	0%
2	Owl Creek Reservoir Company	Owl Creek Reservoir Rehabilitation	Weld	\$ 1,125,000	1200 AF	1,200	1,200	95%	Apr-10	Sep-10	0%
3	Southeastern CO Water Conserv. District	Arkansas Valley Conduit	Crowley	\$ 60,600,000	138 Miles	6,555		20%	May-10	May-12	0%
4	Penrose Water District	Water Rights Purchase and Pipeline Installation	Fremont	\$ 8,844,570	30,624 LF	339		35%	May-10	Sep-11	0%
5	Seven Lakes Reservoir Company	Railroad Crossing	Weld	\$ 772,842	7,796 AF	7,796		95%	Sep-10	May-11	0%
6	Duel and Snyder Improvement Company	Diversion Structure Rehabilitation	Morgan	\$ 90,900	4,590 AF	4,590		25%	Mar-10	On-hold	0%
7	South Metro Water Supply Authority	Raw Water Delivery - Capacity Purchase	Adams/Denver	\$ 5,090,400	10,750 AF	10,750		100%	Sep-10	May-11	0%
8	Park Center Water District	Well Rehabilitation	Fremont	\$ 1,010,000	3,200 L.F.	400		95%	n/a	n/a	De-author.
9	Louden Irrigating Canal and Reservoir Company, Inc.	Rist Benson Reservoir Rehabilitation	Larimer	\$ 263,210	491 AF	2,000	150	30%	Apr-10	Sep-10	0%
10	Town of Gypsum	LEDE Ditch and Reservoir Rrehabilitation	Eagle	\$ 2,689,731	685 AF	1,200	254	75%	Jun-10	Nov-11	0%
11	Town of Dillon	Old Dillon Reservoir Enlargement	Summit	\$ 1,515,000	286 AF	321	140	50%	Sep-10	May-11	0%
12	Joseph W. Bowles Reservoir Company	Bowls No. 1 Dam Rehabilitation	Jefferson	\$ 1,703,870	2,062 AF	900		25%	Mar-10	Feb-11	0%
13	Riverside Reservoir and Land Company	Riverside Reservoir Spillway Enlargement	Weld	\$ 2,838,100	64,000 AF	105,000		50%	May-10	May-11	0%
14	Fort Morgan Reservoir and Irrigation Company	Pipeline Project - Augmentation Retiming	Morgan	\$ 1,494,800	15,840 L.F.	37,058		75%	Sep-10	May-11	0%
15	Lake Canal Reservoir Company	South Gray Reservoir Rehabilitation/Gray No. 3	Larimer	\$ 393,300	1,120 AF	1,120	165	50%	Sep-10	Feb-11	0%
16	Riverside Ditch and Allen Extension Company	Ditch System Rehabilitation	Chaffee	\$ 186,345	3,250 LF	3,260		75%	Feb-10	On-hold	0%
17	WRCC, Inc.	Cobb Lake Inlet Structure Rehabilitation	Larimer	\$ 1,301,890	35,000 AF	35,000		75%	Feb-10	Jul-10	0%
18	Huerfano-Cucharas Irrigation Company	Cucharas Reservoir Rehabilitation	Pueblo	\$ 1,622,060	35,395 AF	3,000	7,500	50%	?	?	On-hold
Total =			\$ 93,057,018	Total =	225,289	9,809					

= Reservoir projects that created new storage, either by new construction, dredging or by the removal of a SEO restriction.



**International Boundary and Water Commission
United States Section**

For immediate release
January 19, 2010

**EDWARD DRUSINA SWORN IN AS COMMISSIONER OF THE
INTERNATIONAL BOUNDARY AND WATER COMMISSION**

Edward Drusina was sworn in as United States Commissioner of the International Boundary and Water Commission, United States and Mexico, during a brief ceremony today at agency Headquarters in El Paso, Texas. Commissioner Drusina was appointed to the post by President Barack Obama on January 15.

"The Commission must strive for Excellence through Teamwork," said Commissioner Drusina.

A civil engineer from El Paso, Texas, Commissioner Drusina has extensive executive experience as an engineer in the private and public sectors. Most recently, he worked as Area Director for Paragon Project Resources, Inc. Prior to that, he was President of OMNI Construction Services, LLC and held executive positions with Moreno Cardenas, Inc. (MCI). While with MCI, he served as construction manager for the off-site infrastructure for the world's largest inland desalination plant recently constructed in Fort Bliss, Texas.

He also worked for the City of El Paso for seven years as Deputy Chief Administrative Officer for Municipal Services and Director of Public Works where he oversaw eight departments and divisions responsible for streets, solid waste, engineering, environmental services, building permits and inspections, fleet maintenance, facilities and special projects, and facilities maintenance. From 1998-2004, he represented the City of El Paso on the Far West Texas Water Planning Group.

He also has 20 years of federal experience, holding engineering positions at Davis-Monthan Air Force Base in Arizona and at Fort Bliss, Texas, where he worked as Chief of Design Br. AA for the Directorate of Public Works and Logistics, and as Deputy Director of the Source Selection Evaluation Board.

Commissioner Drusina holds a Bachelor of Science degree in Civil Engineering from the University of Texas at El Paso and is a Registered Professional Engineer in the State of Texas. He was named Texas Public Works Association Public Works Director of the Year for 2003 and was selected Federal Engineer of the Year by the United States Army – Training and Doctrine Command for 1997.

The International Boundary and Water Commission, United States and Mexico, is responsible for applying the boundary and water treaties between the two countries and settling differences that arise in their application. The Commission operates and maintains flood control levees, international storage reservoirs, diversion dams, wastewater treatment plants, and boundary monuments at various locations on the U.S.-Mexico border. In addition to its Headquarters in El Paso, Texas, the U.S. Section has offices at San Diego, California; Nogales and Yuma, Arizona; Las Cruces, New Mexico; El Paso/American Dam, Ft. Hancock, Presidio, Del Rio/Amistad Dam, Falcon Heights/Falcon Dam, and Mercedes in Texas; and Washington, DC. The USIBWC receives foreign policy guidance from the U.S. Department of State.

For more information:

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Attachment 4 (see pages 5 and 6 for referenced material)

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Attorney General

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Solicitor General

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January 19, 2010

TO: Colorado Water Conservation Board

FROM: John W. Suthers
Attorney General

Peter Ampe
Susan Schneider
First Assistant Attorneys General

RE: Report of the Attorney General

FEDERAL & INTERSTATE MATTERS

1. **Republican River Compact**

The States are working towards hiring an arbitrator and finalizing the arbitration schedule.

WATER RIGHTS MATTER

2. **Concerning the Water Rights of the Upper Eagle Regional Water Authority. Case No's. 03CW78, 98CW205, 98CW270, 02CW403, and 06CW97; Water Division 5**

As described in previous reports, these cases involve the Authority's continued use of an outdated table of monthly depletion rates to calculate the replacements of depletions to the Eagle River. The State submitted the last global settlement proposal regarding these cases. The settlement proposal was rejected, and no counter-proposal has been made by the Authority. A key legal issue as to the meaning of the Authority's decree in Case No. 00CW83, as described below under Case No. 08CW145, may be resolved by the Water Court as early as December. Such a resolution may be helpful in moving settlement forward. Meanwhile, Supreme Court appeals in Case No. 98CW205 and 98CW270 are pending regarding the water court's dismissal of the State's retained jurisdiction petitions in those two cases. These matters will be fully briefed by January 19, 2010, and oral arguments will be requested in both matters. The water court found that its retained jurisdiction could only be invoked to remedy actual injury and not to preclude future injury. The State argues the retained jurisdiction statute expressly contemplates the water court exercising its retained jurisdiction to preclude future injury. Claims for declaratory and injunctive relief regarding the interplay of certain Authority decrees remain pending before the water court in both Case No. 98CW205 and 98CW270. Case Nos. 03CW78, 02CW403 and 06CW97 are pending before the Water Court. Case No. 06CW97 was dismissed

by the Water Referee because the Authority lost its right to its replacement sources for this augmentation plan and a proposed exchange. The Authority has protested this decision to the Water Judge, claiming that it could change replacement sources and retain the same priority date for the claimed exchange. The CWCB has taken no position on this issue, which the State and Division Engineers raised with the Court.

3. Wolfe/CWCB v. Upper Eagle Regional Water Authority, Case No. 08CW145 Division 5

This case involves a dispute over the proper interpretation of the Authority's decree in Case No. 00CW83, which approved the Edwards Water Facility as a third alternate point of diversion for some of the Authority's water rights. Based on one poorly-worded clause in the decree, the Authority argues that this decree approved a sweeping change in the location of use of over 70 water rights, which would adversely affect instream flow rights and the water rights of others, including the Grand Valley Water Users. The State believes the decree only approved an additional point of diversion for certain specifically described water rights, and did not approve any change in location of use. Cross-motions for the determination of questions of law regarding the interpretation of the decree in Case No. 00CW83 have been filed and briefed for the Court. The parties await a ruling, which could be entered by the end of the year.

4. Upper Yampa Water Conservancy District, Case No's. 07CW61&72, Water Division 6.

These consolidated cases both involve water rights for a proposed reservoir on Morrison Creek. The proposed reservoir and water rights could impact the CWCB's ISF right on Silver Creek, by inundating a portion of the reach, and the ISF right on the Yampa River, by changing the point of diversion for two senior water rights from below the ISF reach to above it. CWCB Staff is working diligently with applicant to craft a stipulation and decree language addressing both of these concerns. Upper Yampa agreed to this stipulation on August 31, 2009.

5. Upper Arkansas Water Conservancy District, Case No. 06CW32, Water Division 2

This case involves a plan for augmentation covering most of the service area of the district. The proposed plan is an "umbrella" type plan that will augment all eligible structures within the area with a variety of existing and future replacement sources. The plan also acts to complement two existing plans for augmentation by expanding the areas of replacement and adding new types of eligible augmented structures. The CWCB filed a statement of opposition to the application in order to protect a large number of instream flow rights in the tributaries of the Arkansas River. A team from the CWCB and Attorney General's Office successfully negotiated protective terms and conditions to include in the final decree. In general, the terms allow notice to the CWCB of any additional sources of replacement water and of new augmented structures. The UAWCD will maintain the initial burden in all instances to show that these additions will not injure CWCB instream flow rights. The CWCB will also have the opportunity to comment on any additions and may resort to a Court determination of any disputes over whether the UAWCD has successfully demonstrated a lack of injury. The Court recently entered a final decree for this plan.

6. Application of Robert Gregg Sease, Case No. 08CW10, Water Division 3

Sease filed a Plan for Augmentation and Change of Water Rights in Case No. 08CW10. The CWCB and the State and Division Engineers (collectively "Engineers"), among others, filed Statements of Opposition. One of the replacement sources in the plan for augmentation is the Tarbell Ditch, which is a transmountain water right diverted from Division 4 and applied to use in Water Division 3. The Tarbell Ditch is decreed for the irrigation of 1500 acres located downstream of Sease's Ranch Property. It was unclear from the Application whether Sease intended to change the type of use of the Tarbell Ditch water right prior to using it as a replacement source.

The Engineers filed a Motion for Determination of Question of Law seeking a determination from this Court on two issues: (1) whether a transmountain water right originally decreed for irrigation must be changed prior to being used for augmentation at an undecreed location; and (2) whether, when changing a transmountain water right, the applicant must prove that such change will not injure water users in the basin of origin. The Court granted the Engineers' Motion and concluded that, as a matter of law, a transmountain water right must be changed prior to use as a replacement source in an augmentation plan; and, as part of that change, the applicant must show that water users in the basin of origin will not be injured. The Court further concluded that, if the applicant elects to request the change of water right in Division 3 Water Court (the basin of use), the matter should also be published in Division 4 (the basin of origin) in the same manner and in the same publication as would be required if the application for change were filed in Division 4.

The case was scheduled for a 3 day trial to commence on January 19, 2010. As a result of the Court's Order, the trial has been continued to allow for publication in Division 4. It is anticipated that trial will be held sometime in the fall of 2010; however, the trial may be further postponed if additional parties choose to file Statements of Opposition.

7. Pagosa Area Water and Sanitation District and San Juan Water Conservancy District v. Trout Unlimited No. 08SA354

On remand from the Supreme Court's decision in Pagosa I, the District Court for Water Division No. 7 entered a conditional decree for the Pagosa Area Water and Sanitation District and the San Juan Water Conservancy District (the "Districts") based upon a planning period extending to the year 2055.

In this appeal, Trout Unlimited challenged the length of the planning period and contended that the evidence in the record did not support the conditionally-decreed amounts of water. The Supreme Court upheld the Water Court's finding that the 2055 planning period is reasonable, but held that the record did not support the amounts of water decreed and remanded the case for a determination of water amounts reasonably necessary to serve the Districts' reasonably anticipated needs during the planning period, above its current water supply. The Districts projected nearly twice the population as shown in the Colorado Water Conservation Board's June 2009 draft study titled "Colorado's Water Supply Future."

DEFENSE OF THE COLORADO RIVER SUBUNIT

Legal Counsel with respect to Colorado River - The Colorado River Subunit continues to provide the Colorado Water Conservation Board, Department of Natural Resources, and the Upper Colorado River Commission with legal counsel on developments concerning the Colorado River. Most recently, the Subunit has provided legal counsel to these entities regarding:

- Operations at Glen Canyon Dam and the role of the National Park Service and the Glen Canyon Adaptive Management Workgroup;
- Upper Colorado River Commission meetings;
- Inquiries concerning the Basin Fund;
- Compact administration;
- Planning and implementation of the Colorado River Basin Water Supply and Demand Study as part of the Bureau of Reclamation's Water Conservation Initiative;
- US and basin state negotiations with Mexico on potential efficiency, augmentation, and shortage sharing projects;
- Wild and scenic river negotiations;
- Ongoing imaging and coding of Colorado River documents.

Interstate Litigation with respect to Colorado River matters:

8. Grand Canyon Trust v. Bureau of Reclamation, et. al

This case involves operation of Glen Canyon Dam and implementation of the 5-Year Experimental Plan between 2008 and 2012. The Experimental Plan involves one High Flow Test and 5 years of Modified Low Fluctuating Flows (MLFF) in conjunction with Fall Steady Flows released from Glen Canyon Dam. Grand Canyon Trust filed suit against the Bureau of Reclamation, its Commissioner, and the Fish and Wildlife Service (FWS) in US District Court of Arizona alleging, in relevant part, that: 1) Reclamation's use of MLFF at Glen Canyon Dam violates the Endangered Species Act (ESA) (Claims 1-3); and 2) Reclamation's implementation of the Experimental Plan consistent with the 2008 Biological Opinion also violates the ESA (Claim 7). The remaining claims concerning Reclamation and the FWS's compliance with NEPA, the ESA and the Grand Canyon Protection Act have been dismissed. The seven Basin States (Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming) and the Southern Nevada Water Authority joined this litigation as joint intervenors, in May 2008, as did major water and power users.

In May 2009, the Court granted summary judgment in favor of Grand Canyon Trust (Experimental Plan -- ESA), and ordered FWS to provide a more reasoned analysis of its 2008 Biological Opinion conclusions concerning the use of MLFF as part of the 5 Year Experimental

Plan. In the interim, the Court stayed Claims 1-3 pending completion of the revised Biological Opinion. In response, the FWS issued a 2009 Supplemental Biological Opinion on November 2, 2009. Its opinion relies on updated information as well as the 2009 Draft Recovery Goals for the Humpback Chub to conclude that MLFF, in the context of the Glen Canyon Dam Adaptive Management Program, does not jeopardize endangered species or adversely modify their critical habitat in the Grand Canyon.

Grand Canyon Trust has since filed a 60 day notice of lawsuit and moved to supplement its complaint with three additional claims, including: 1) Claim 9 – Challenge to the merits of the 2009 Supplemental BiOp and its Incidental Take Statement; 2) Claim 10 – Challenge to the 2009 Incidental Take Statement's compliance with NEPA; and 3) Claim 11 – ESA and APA challenges to the Draft Recovery Goals. Although the Federal Defendants and Intervenor objected to claim 10 as untimely and causing undue delay and undue prejudice, the Court granted the Trust's motion to assure that all issues are litigated together in a timely manner. (Order, dated January 7, 2010). The Court further reasoned that any futility argument associated with the new claims can be addressed on the merits of those claims. Therefore, the Trust will formally file a second supplemental complaint on January 27, 2010 after the 60 day notice period for the additional claims expires. Subsequent briefing on all pending claims (Claims 1-3 and 9-11) shall be completed by the end of March.

Most recently, the Court has ordered the parties as a results of its separate review of a news article in the Arizona Republic to provide briefs on how DOI's proposal to pursue a High Flow Experimental Protocol for Glen Canyon operations will impact the ongoing litigation. The States have been and continue to be in coordination with DOI and DOJ to respond by explaining that the Protocol is merely a proposal being considered in addition to the actions currently at issue in this litigation. Given the preliminary nature of the Protocol, which still has to go through the Adaptive Management Work Group, as well as NEPA and ESA evaluations, it should have no bearing on the litigation as it currently stands.

9. Quantified Settlement Agreement (QSA) Verification Proceedings JC4353

The Subunit is monitoring verification proceedings for California's 2003 Quantified Settlement Agreement and related documents. Together, these documents comprise an agreement among California water users, the State of California and the Department of the Interior to authorize and implement *water transfer and conservation measures to enable Southern California to operate within its 4.4 million acre-feet allocation of Colorado River water*. Specifically, the documents: 1) quantify the amount of Colorado River water the Imperial Irrigation District (IID) and Coachella Valley Water District (CVWD) are each entitled to under the 1931 California Seven Party Agreement (among California water users); and 2) provide a basis upon which California water users can develop firm water supplies for municipalities and environmental purposes without relying on more Colorado River water than it agreed to under the 1929 Boulder Canyon Project Act and as imposed by the Arizona v. California Supreme Court Decree. Because the package of QSA documents provide a foundation for California's consent to current 7-State and federal agreements, the outcome of these proceedings may influence California's current and future approach to basin state relations and Colorado River operations.

The Superior Court of Sacramento County issued a tentative ruling on December 10, 2009 that would invalidate the "Joint Powers Authority Creation and Funding Agreement" and "Environmental Cost Sharing Agreement" portions of the QSA package. According to the Court, these documents contain provisions that may "unconditionally commit [the State] to pick up the entire tab for mitigation costs [associated with less return flows to the Salton Sea] exceeding the capped contribution of the other QSA parties, notwithstanding the amount of those costs -- even if they ultimately amounted to millions or billions of dollars -- and notwithstanding the State's budget, appropriations, or other control over expenditures." (Tentative Ruling at 15). Such provisions, the Court reasons, may violate California's Constitution by authorizing the state to contract for amounts well over the constitutional debt limit and contractually bind future legislators' hands. *Id.* at 16. Because the agreements comprising the QSA package are so interrelated and interdependent, the Court also concluded that the unconstitutionality of one contract could likely invalidate them all. *Id.* at 18.

Oral argument on the Court's tentative ruling was held on December 17, 2009. The IID board and Metropolitan Water District, among other, reportedly disputed the Court's rationale and potential invalidation of the QSA package in its entirety. The Court's final ruling is still pending.

Depending on the final ruling and the ultimate outcome of these proceedings, Colorado is considering options for collaborating with the other basin states to protect current and future Colorado River operations.

**DECLARATION OF JANE BIRD IN SUPPORT OF JOINT
PETITION FOR WRIT OF SUPERSEDEAS**

I, Jane Bird, declare:

1. I am general counsel to the Upper Colorado River Commission (the "Commission"). I make this declaration in support of Imperial Irrigation District, San Diego County Water Authority, The Metropolitan Water District of Southern California, and Coachella Valley Water District's Joint Petition for Writ Of Supersedeas (or Related Relief) Seeking Stay of Order Invalidating Quantification Settlement Agreement and Related Agreements Pending Appeal [JCCP Proceeding No. 4353]. I have been general counsel to the Commission since 1981; therefore, I have personal knowledge of the facts set forth in this declaration, and if called as a witness, could and would testify competently thereto.

2. The Colorado River Compact of 1922 apportions, in perpetuity, the consumptive use of water of the Colorado River system to the Upper Basin (Colorado, New Mexico, Utah, Wyoming, and a portion of Arizona) and the Lower Basin (Arizona, California, Nevada, and portions of New Mexico and Utah) and creates mutual obligations between the two basins. Subject to the provisions and limitations contained in the Colorado River Compact, the Upper Colorado River Basin Compact apportions water among the Upper Basin states.

3. Under the Upper Colorado River Basin Compact of 1948, the Commission is an interstate administrative agency composed of one Commissioner representing each of the Upper Division states (the states of Colorado, Utah, Wyoming, and New Mexico) which use

water from the Colorado River, and one Commissioner appointed by the President representing the United States.

4. Under the Boulder Canyon Project Act, 43 U.S.C. 617, and the U.S. Supreme Court Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006), the Secretary of the Interior has the authority to contract for the delivery of water from Lake Mead to water users within the states of Arizona, California and Nevada. Under that authority, the Secretary has contracted with water users within the State of California consumptive water uses totaling 4.4 million acre-feet per year. This quantity is commonly referred to as California's "basic apportionment," which is available under a "normal" declaration by the Secretary. The Secretary may declare more or less than this amount available each year through a "surplus" or a "shortage" declaration.

5. Within California, a priority system was created by agreement among contractors for the use of water from the Colorado River. Agricultural contractors have the senior priorities. The Metropolitan Water District (MWD) and San Diego County Water Authority have junior priorities. This priority system accounts for uses in excess of California's basic apportionment. As a result, the Metropolitan Water District of Southern California ("MWD") has the right to divert 550,000 acre-feet within California's basic apportionment, and 662,000 acre-feet above that amount. Thus, the major metropolitan areas of Southern California served by MWD are dependent on effectuating the agricultural-to-urban transfers provided in the Quantification Settlement Agreement ("QSA"), or securing

water from other sources, in order to obtain a full water supply within or in addition to California's basic apportionment.

6. Until the early 1990s, California was lawfully using water in excess of its basic apportionment due to relatively abundant water supplies in storage in Lakes Powell and Mead, and due to unused apportionments in other Colorado River system states. However, in the early 1990s drought conditions and increasing water use caused concern in the other six states that share the Colorado River that continued delivery of surplus water to California municipal water users was not sustainable, and threatened to draw down Colorado River reservoirs to the detriment of the other six states. As a result, when California requested that the Secretary continue his practice of surplus declarations to allow for continued diversions through the Colorado River Aqueduct, the six states opposed the request. The six states asserted that California should reduce its dependence on surplus water deliveries by developing a program whereby water use under the senior agricultural priorities would be reduced or transferred for use by the junior domestic priorities, thereby allowing for the major municipal needs within southern California to be met within California's basic apportionment. The six states proposed that if California were to develop such a program, the six states would agree to allow for continued surplus deliveries for a defined period of time, thus providing California with a "soft landing" in addressing its overuse problem and reducing costs and potential water shortages within Southern California.

7. Through intense and continuous negotiations over a period of years, the seven states of the Colorado River system agreed

upon, and the Secretary of the Interior adopted in 2001, Colorado River Interim Surplus Guidelines (“ISG”), which specified the conditions under which the Secretary would make surplus declarations for the delivery of water from Lake Mead. 66 FR 7772 (Jan. 25, 2001). From the outset of the negotiations in 1991, it was clear that a quantification of the agricultural priorities within California under the Seven Party Agreement was an essential component to implement the proposed program. This quantification would allow for reduced demand for water under senior agricultural priorities to be transferred for use by the junior municipal priorities of MWD. Such an agreement was referred to as a “QSA.”

8. Key to the adoption of the ISG was the allowance of continued surplus declarations under specified conditions. Expressly included within these conditions was a program for California agencies to meet specific benchmarks in agricultural water use reduction to reduce California’s need for surplus Colorado River water. As a result, embedded in the ISG was the explicit expectation that California water users would systematically reduce their water use to 4.4 maf. The ISG provided for enforcement against California in the event California water users did not systematically reduce their water use to 4.4 maf. The ISG also expressly states that it does not “[c]hange the apportionments made for use within individual States, or in any way impair or impede the right of the Upper Basin to consumptively use water available to that Basin under the Colorado River Compact.” 66 FR 7772, 7780.

9. In October 2003, the California agencies completed negotiations and finalized the QSA—the agreement that the California

water users entered into to systematically reduce their water use to 4.4 maf. The completion of this agreement was the last step in the overall initiative to achieve greater predictability and certainty in California water supplies for millions of people and the irrigation of millions of acres of land.

10. As the QSA was being finalized, the Colorado River Basin was entering one of the most severe periods of drought in recorded history. In reliance on California's continuing efforts to reduce its use to 4.4 maf, as articulated in the QSA, the states of the Colorado River Basin engaged in negotiations for new guidelines for the management of water supplies in the Colorado River Basin. These negotiations were successfully completed with the adoption in 2007 by the Secretary of the Interior of Colorado River Guidelines for Lower Basin Shortages and the Coordinated Operations of Lake Powell and Lake Mead ("2007 Guidelines"). 73 FR 19873 (April 11, 2008). The 2007 Guidelines incorporate relevant provisions of the ISG as well as the benchmarks and enforcement mechanisms for California to reduce its agricultural water use.

11. The Judgment of the Court in this case is the cause of serious concern to the Commission. In the event the 30-day stay granted by the trial court is not continued without interruption for the duration of the appeal and the QSA agreements do not remain in place, and the programs agreed to in the QSA are not implemented and California does not meet the benchmarks required to reduce agricultural water use, the Upper Division states face the specter of California municipalities returning to a reliance on surplus and interruptible water supplies. Such a reliance would increase

competition on the Colorado River for limited water supplies and could invite controversy among the basin states.

12. Included in the potential uncertainty described above is the prospect of renewed measures by the Secretary of the Interior to force reductions in water use in the Imperial Irrigation District, and a resulting re-initiation of litigation. Such litigation would increase uncertainty and could create animosity within California agencies, at a time of water shortages in California caused by continuing drought and reductions in State Water Project supplies. Such uncertainty may cause California agencies to seek new water supplies in other states, resulting in additional controversy, potential litigation, and potential increased costs to water users throughout the Colorado River Basin.

13. The Colorado River Basin states and major water utilities including the Metropolitan Water District of Southern California, San Diego County Water Authority and Southern Nevada Water Authority, through the auspices of the Departments of State and Interior and the International Boundary and Water Commission, are currently engaged in productive and far-reaching discussions with the Republic of Mexico and the States of Baja California and Sonora, in order to further expand on the initiatives enacted through the 2007 Guidelines and provide for more secure water management of the Colorado River for the benefit of water users and the environment in Mexico, and allow access to additional water supplies in Mexico for use in the United States. Such negotiations are dependent upon a secure foundation of water management regulation in the United States, and predictability of water supply. In the event the Court does not stay its Judgment pending the completion of all appeals, the

resulting uncertainty could have a chilling effect on these negotiations, potentially impacting water users and the environment not only in the United States but also in Mexico.

14. Granting a stay of the Court's Judgment in this case pending the completion of all appeals would reduce uncertainty to the Upper Division states, would allow for more certainty in continued cooperation among the Basin States, and would allow the continuation of discussions among the Colorado Basin States and Mexico ensuring that Colorado River disputes in the United States do not adversely affect international negotiations.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 22nd day of February 2010 at Salt Lake City, Utah.



JANE BIRD

Colorado Water Conservation Board**Department of Natural Resources**

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Bureau of Land Management
Uncompahgre Field Office, Colorado
Attn: RMP Revision
2645 S. Townsend Ave.
Montrose, CO 81401

February 26, 2010

Bill Ritter, Jr.
Governor

Jim Martin
Executive Director

Jennifer Gimbel
CWCB Director

Dan McAuliffe
Deputy Director

Re: CWCB Comments on *Draft Wild and Scenic Eligibility Report for the Bureau of Land Management Uncompahgre Planning Area*.

The Colorado Water Conservation Board (CWCB or Board) appreciates this opportunity to comment on the *Draft Wild and Scenic Eligibility Report for the Bureau of Land Management Uncompahgre Planning Area* (Draft Report) released by the Bureau of Land Management ("BLM") in December 2009.

The Draft Report details the inventory and evaluation of waters within the Uncompahgre Planning Area and portions of the Dominguez-Escalante National Conservation Area for potential eligibility in the National Wild and Scenic Rivers System. The analysis considers the condition of river segments along the Lower and North Fork of the Gunnison, the San Miguel, and the Upper and Lower Dolores Rivers, each of which comprises part of the Colorado River hydrologic system within Colorado.

The CWCB has a substantial interest in the efficient management and wise administration of the river segments inventoried and evaluated in the Draft Report. The CWCB is authorized to, among other things, "cooperate with the United States and the agencies thereof . . . for the purpose of bringing about the greater utilization of the water of the state of Colorado . . ." and "to confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other agencies of . . . the federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state."¹

Furthermore, the CWCB has the exclusive authority to appropriate instream flow water rights,² and its Instream Flow Program has proven to be very successful, protecting over 8,500 miles of streams and 480 natural lake levels in Colorado. The BLM has successfully relied on this program in dozens of situations to protect water resources located within or adjacent to BLM lands. It is under this authority and in the interest of protecting the rights and needs of its citizens that Colorado submits the following comments:

- The CWCB appreciates the Draft Report's express acknowledgement that the eligibility analysis is an initial phase of the Wild and Scenic River investigation, intended to identify the BLM's opinion regarding the free-flowing nature and outstanding and remarkable values of the inventoried river segments. Although the CWCB may dispute or disagree with some of the BLM's findings in the Draft Eligibility Report if it

¹ Section 37-60-106, subsections (e) and (i), C.R.S. (2009).

² Section 37-92-102(3), C.R.S. (2009).

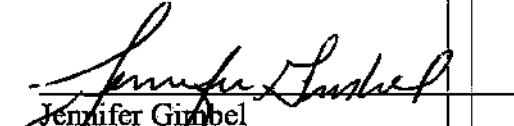
conducted its own field investigation and review, the CWCB recognizes the Draft Report is the result of a federal administrative inventory and evaluation that will undergo further impact analysis, consultation and coordination with interested stakeholders during the suitability phase.

- The CWCB appreciates the Draft Report's commitment to collaborating with non-federal stakeholders during the suitability phase of Wild and Scenic River analysis for the Uncompahgre Planning Area and portions of the Dominguez-Escalante National Conservation Area. The CWCB has been and continues to be actively involved in a number of non-federal stakeholder groups coordinating with the BLM and US Forest Service as appropriate during the suitability analysis for stretches of the Upper and Lower Colorado River, the Dolores River, and the San Juan River basins. These stakeholder efforts are attempting to develop management plans to protect the values associated with the various segments, as identified by the federal agencies as being eligible for wild and scenic rivers designation, while allowing Colorado to fully use its entitlements under the Colorado River and Upper Colorado River Basin Compacts. Between 2007 and 2009, the CWCB was also able to provide resources and funds to explore reasonable and acceptable alternatives to wild and scenic designation by federal agencies. The CWCB looks forward to a similar collaboration, to the extent resources are available, during the suitability phase of the Wild and Scenic River investigation for the Uncompahgre Planning Area to further evaluate the eligibility classifications of the inventoried river segments and identify whether and to what extent there are plausible alternatives to designation of eligible segments as suitable.
- The Draft Report notes that the San Juan Public Lands Draft Land Management Plan recognizes a segment of the upper Dolores River as eligible. It further provides that the northernmost 11.8 miles of this segment is within the UFO's jurisdiction and will be evaluated by the UFO during the suitability phase.

The CWCB recommends the UFO coordinate with the San Juan Public Lands Center, the Dolores River Dialogue stakeholder group and Lower Dolores Plan Working Group when conducting the suitability analysis for the Dolores river segment within the UFO's jurisdiction. These entities have been working together for the past 24 months to identify potential methods for securing needed protections of the outstandingly remarkable values without limiting reasonable water development along the Dolores River segment between McPhee Dam and Bedrock, Colorado. The UFO should incorporate and build upon these past and ongoing consultations to develop consistent management strategies for the contiguous stretch of the Dolores River.

- The Comments provided herein focus on the primary interests of the CWCB with regard to the Draft Report. Lack of additional comments should not be construed as agreement with or an admission of all factual and legal assertions made therein. Nor should silence on factual and legal characterizations in the Report be deemed a waiver of any of rights for the purposes of any future legal, administrative, or other proceeding.

Finally, the CWCB would like to thank the BLM for its efforts in developing the Draft Eligibility Report and willingness to consult the public before finalizing it. This has not occurred with all other Eligibility Reports issued by different BLM field offices, and we appreciate this opportunity to comment. We look forward to continuing our excellent relationship with the BLM on water rights issues during the next phases of the Wild and Scenic investigation for the Uncompahgre Planning Area and portions of the Dominguez-Escalante National Conservation Area.


Jennifer Gimbel
Director
Colorado Water Conservation Board

cc: Alex Davis, Colorado Department of Natural Resources



FEBRUARY 2010 DROUGHT UPDATE

Water Availability Task Force Co-Chairs

Veva Deheza, CWCB - 303-866-3441 ext. 3226
Email – veva.deheza@state.co.us

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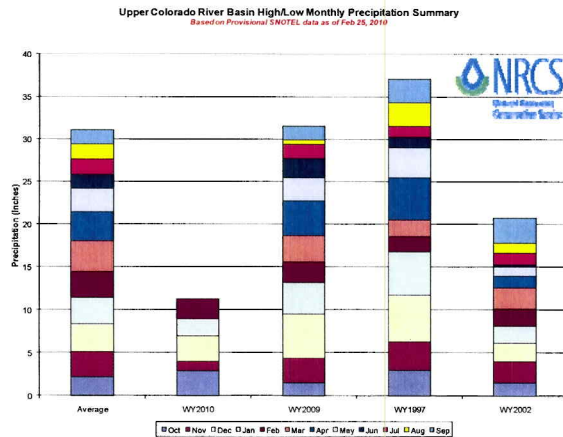
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Forecasters expect El Niño conditions to continue with moderate strength through April. Most of Colorado is predicted to experience a wet spring. Areas that did not receive much moisture during the winter months, such as the northwest part of the state, will benefit from spring moisture as the storm track is predicted to move north. Forecasters predict lingering spring moisture which will benefit most of Colorado through June.

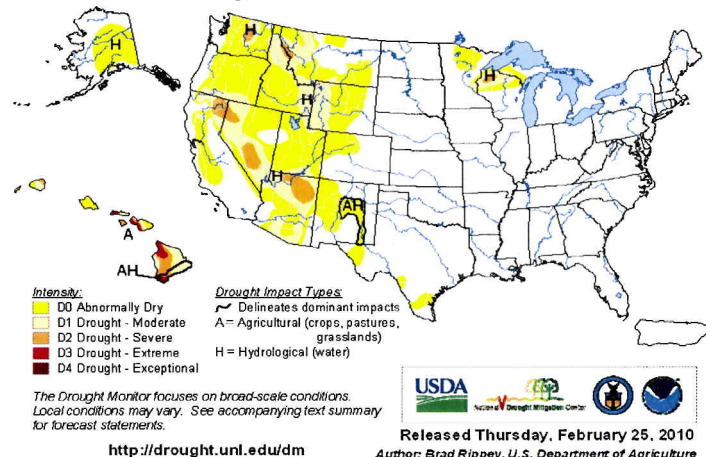
FEBRUARY 2010 DROUGHT UPDATE



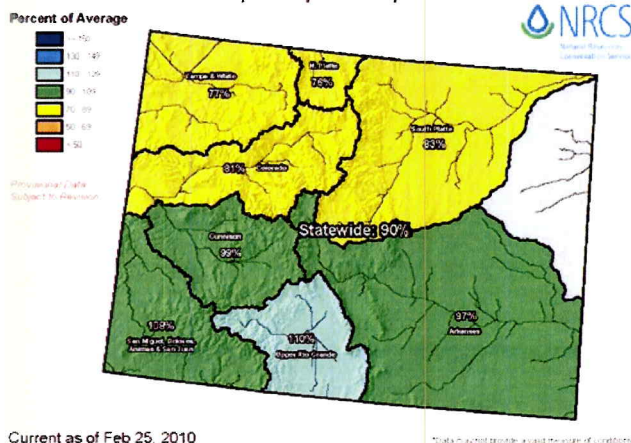
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The adjacent map shows the U.S. Drought Monitor as of February 23, 2010. Late January snow storms & February moisture in the southwest helped reduce the drought concerns in the region. Dry conditions have continued for the northwestern part of the state and are at D0, "Abnormally Dry" conditions. The Northwest part of the state could greatly benefit from predicted spring moisture.

U.S. Drought Monitor February 23, 2010 Valid 7 a.m. EST



Colorado SNOTEL Snowpack Update Map



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Shell drops bid for Yampa River water

By Mark Jaffe

The Denver Post

Posted: 02/24/2010 01:00:00 AM MST

Shell Exploration and Production Co. has dropped its bid for a 15 billion- gallon water right on the Yampa River, citing a slowdown in its oil-shale development program.

Shell said in a statement it has decided not to pursue the Yampa water right at this time "in light of the overall global economic downturn that has affected our project's pace."

The controversial proposal — seeking about 8 percent of the Yampa's average spring flow — drew opposition letters from 27 businesses, environmental groups and federal, state and local agencies.

"The Yampa is the last river in Colorado with natural peak and low flows," said Kent Ventrees, who teaches river recreation at Colorado Mountain College. "This is outstanding news for the Yampa."

The natural river sustains endangered fish species and flows through Dinosaur National Monument, where National Park Service officials worried that Shell's plan would hurt the park.

Shell was seeking a water right to pump water into a new reservoir covering 1,000 acres and 15 billion gallons.

The water — taken from a point west of Craig — would have been shipped to the White River basin for use in Shell's oil-shale program.

Shell said it would continue oil- shale research and development work and plans to submit applications for its first pilot project this year or in early 2011.

Commercial development may be at least 10 years away.

"It is obvious that commercial oil- shale development is still not ready for prime time," said Boulder-based Western Resource Advocates.

"As a result of Shell's actions, Colorado residents can breathe a little easier and the Yampa River lives to flow another year," Western Resource Advocates said.

Shell's water-right application was vulnerable to challenges because the water could not be directly put to use, said Drew Peternell, Colorado water- project manager for Trout Unlimited.

"They don't even know how much water they need," Peternell said. "It was very close to speculation, which is not allowed in Colorado water law."

Mark Jaffe: 303-954-1912 or mjaffe@denverpost.com

Read more: http://www.denverpost.com/search/ci_14457934#ixzz0hgmmKRNd

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members
Director's Report

FROM: Kirk Russell, PE, Loan Marketing
Finance Section

DATE: March 8, 2010

SUBJECT: **Director's Report Attachment – March, 2010**
Loan Forecast & Prospect Report

Bill Ritter, Jr.
Governor

James B. Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
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Greeley-Loveland Irrigation Co.	Augmentation Structure	\$500,000
Boulder Left Hand Irrigation. Co	Ditch Piping	\$300,000
Pinehurst Country Club	Harriman Lake Project Rehabilitation	\$500,000
Bergen Ditch Company	Ditch Rehabilitation	\$1,000,000
	Total	\$4,900,000

Information shown is based on current staff knowledge and will likely change as Loan Prospects develop

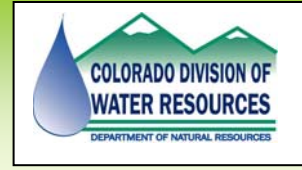
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SMALL (<\$10 million) LOAN PROSPECTS

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		Greeley –Loveland Irrigation Co.	Augmentation Structure		\$500,000
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		Town of Johnstown	Kauffman Reservoir Purchase		\$5,000,000
	10/10	Private Group of Farmers (NRCS)	North Sterling Delivery System		\$500,000
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	1/09	East Larimer County Water District	Rigdon Storage Project		\$3,000,000
		NISP Participants	NISP		\$30,000,000
	11/09	Chatfield Reallocation Participants	Chatfield Reallocation Participants		\$40,000,000
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Arkansas					
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Gunnison					
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FEBRUARY 2010 DROUGHT UPDATE

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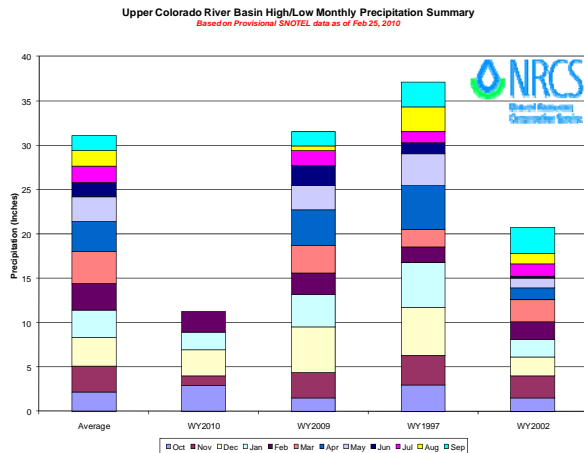
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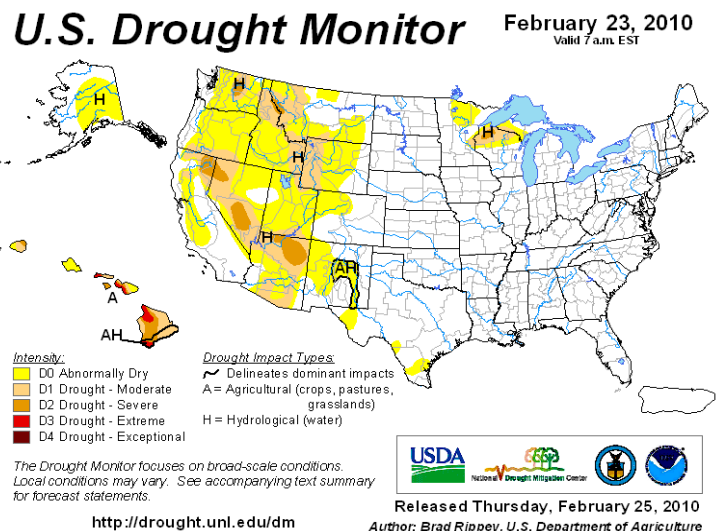
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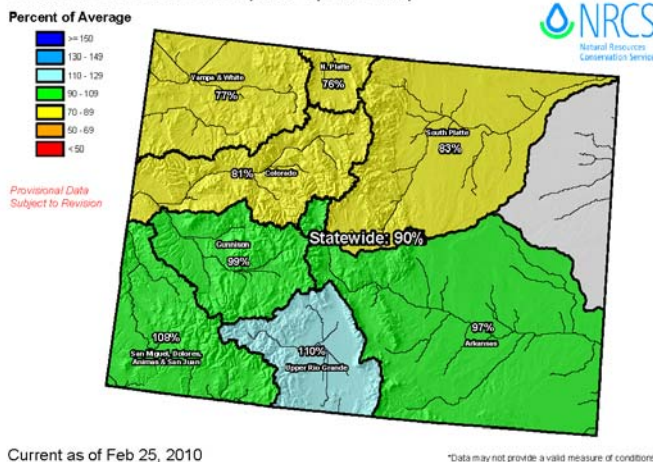


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Bill Ritter, Jr.
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FROM: Kirk Russell, PE, Loan Marketing *YGR*
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James B. Martin
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