

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



Bill Ritter, Jr.
Governor

James B. Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

TO: Colorado Water Conservation Board Members

FROM: Jennifer Gimbel, Director, CWCB
Tim Feehan, P.E., Chief, Finance Section
Ted Kowalski, Water Supply Protection Section

DATE: March 25, 2010

SUBJECT: **March 29, 2010 – Special Telephonic Board Meeting**
Water Supply Planning and Finance Section
Animas-La Plata Project Water

Background

The Animas-La Plata Project (A-LP) is a water project located in southwestern Colorado and northwestern New Mexico, planned and constructed to fulfill the water rights settlement of the two Indian tribes that are federally recognized within Colorado the Ute Mountain Ute and the Southern Ute Tribes.

The A-LP Project has been a subject of congressionally funded studies, public debate, and congressional action and inaction for nearly four decades. The original congressional authorization for the United States Bureau of Reclamation project came in 1956 under the Colorado River Storage Project Act and was authorized for construction in 1968 under the Colorado River Basin Act. The original concept consisted of three reservoirs and 48 miles of canal that would deliver 191,200 acre-feet of water from the Animas Basin to the La-Plata Basin for irrigation purposes. It wasn't until twelve years later in 1980 that the environmental impact statement was approved and released for the A-LP Project. In 1986, the Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-LaPlata Cost Sharing (1986 Agreement) was executed and included the construction of the A-LP as part of the federal reserved water rights settlement for the Ute Mountain Ute and Southern Ute Tribes. The AL-P Project was scheduled to commence construction in the 1990's, but was delayed due to a lawsuit that was filed regarding environmental compliance issues. In 1998, the Department of the Interior issued a recommendation for a substantially scaled-down project, designed primarily to satisfy Native American water rights, to address municipal and industrial needs in the immediate area, and to reduce environmental impacts. The scaled down version of the project was dubbed "ALP Lite" and this resulted in the removal of the irrigation component of A-LP Project.

In 2000, the U.S. Congress amended the Ute Settlement Act and authorized the final configuration and cost sharing and financing of the A-LP Project. Funding of the A-LP Project was provided by the United States Department of the Interior through the Bureau of Reclamation. The 2000 amendment to the 1986 Agreement discusses non-Tribal municipal and industrial water capital repayment obligations for the A-LP Project.

The final congressionally approved A-LP Project includes the construction of a 280 cubic feet per second pumping plant on the Animas River, just south of downtown Durango, Colorado; an underground pipeline to carry project water from the pumping plant to the reservoir location, and an off-stream reservoir at Ridges Basin, southwest of Durango. Ridge Basin Reservoir (Lake Nighthorse), will store 120,000 acre feet of water for M&I purposes only and may not exceed 57,100 AF annual depletions. The seven A-LP Project beneficiaries and their statutory project water allocations are as follows:

- **Southern Ute** – 33,050 AF (16,525 AF Depletions)
- **Ute Mountain Ute** – 33,050 AF (16,525 AF Depletions)
- **Animas-La Plata Water Conservancy District** – 5,200 AF (2,600 AF Depletions)
- **State of Colorado** – 10,460 AF (5,230 AF Depletions)
- **Navajo Nation (NM)** – 4,680 AF (2,340 AF Depletions)
- **San Juan Water Commission (NM)** - 20,800 AF (10,400 AF Depletions)
- **La Plata Water Conservancy District (NM)** – 1,560 AF (780 AF Depletions)

The A-LP Project commenced construction in 2001 and is essentially complete. The reservoir is currently filling and is anticipated to be at full capacity by the spring of 2011. Final accounting by the Bureau and project substantial completion is tentatively scheduled for late 2011 early 2012.

Discussion

The State has the option of entering into a repayment contract with the US Bureau of Reclamation (Bureau) to purchase all or part of its project water allocation of 10,460 AF. If the State should choose not to purchase any of its water that water will revert equally back to the two Tribes. The Tribes current allocation must be used on the reservations or within the Southwestern Water Conservation District boundaries, per the water rights decree. The State's water is not restricted for use within the reservations or district boundaries; therefore if the State's water were to revert to the Tribes, it could be leased or sold to other water users outside of the reservations or district boundaries. In addition, any water that may revert to the Tribes may be at greater risk to a possible inter-basin transfer.

The cost to the State to purchase its full pool allocation of 10,460 AF is estimated at \$28M. Additionally, since the State did not enter into a purchase agreement for the water with the Bureau prior to construction, the State is subject to interest charges during the construction period. The interest charges are currently estimated at \$6.7M, based on a federal set interest rate of 8.135%, which would bring the total water purchase price to approximately \$34.7M or \$3,320 per AF. Operating, maintenance, and replacement costs (OM&R) have been estimated to be between \$313,000 to \$376,000 per year or \$30-\$36 per AF. However, the variable costs associated with the OM&R

amounts will be lower than this estimate because this estimate does not take into account the variable costs fund that has been established by the two tribes.

A-LP Study

This fall the CWCB hired Brown and Caldwell (Consultant) to make an initial examination of the need and potential use within the basin of A-LP Project water if the state should choose to purchase its allocation. The Consultant found that there is an immediate interest by local water providers to purchase up to 1,000 AF of consumptive use.

The latest Statewide Water Supply Initiative (SWSI) information identified a 4,900 AF gap in demand versus supply by 2030 for the entire Dolores/San Juan/San Miguel Basin. The draft Colorado River Water Availability Study (CRWAS) indicates that southwestern Colorado could be hit the hardest under various climate scenarios. In addition, the CRWAS shows that under some scenarios Colorado may face an increased chance of compact curtailments.

The State and the Southwestern Water Conservation District are currently working together on completing Phase II of the Animas-La Plata Water Supply and Demand Study. This effort will examine exchange potentials, compact issues, climate change and the potential impact on demand, detailed evaluation of operating, maintenance, and replacement costs, final cost allocation by the Bureau, potential federal statute revisions, and financing options. The draft scope is currently being prepared and the Phase II Study should be completed by July/August of 2010.

Potential Benefits Beyond Marketing

Besides using the water for direct municipal and industrial use, there are some other benefits that the State could receive from securing its A-LP pool allocation:

- The Tribes current allocation must be used on the reservations or within the Southwestern Water Conservation District boundaries, per their water rights decree. If the State should choose not to purchase any of its water that water will revert equally back to the two Tribes. If the State's water reverts to the tribes, that water could be leased or sold. The State's water is not restricted for use on the reservations or district boundaries, therefore if the State's water were to revert to the Tribes, it could be leased or sold to other water users outside of the reservations or district boundaries.
- In addition, any water that may revert to the Tribes may be at greater risk to a possible inter-basin transfer.
- A-LP water is Colorado entitled water under the Colorado River Compact, the Upper Colorado River Compact, and the Animas-La Plata Compact and the settlement for Indian reserved water rights. The State should protect compact entitled waters of the state.
- The purchase of A-LP water (780 AF depletion minimum) allows the State to have a seat on the A-LP Operation, Maintenance and Replacement Association. Each Association Member has an equal vote, regardless of the amount of water purchased. Therefore, it's important for the State to have a future voice/vote in A-LP to ensure that the Tribes or adjacent States do not have a greater say in the decision making process of the Association.

- The State's allocation could potentially be used for other purposes. Though the water is designated for M&I uses only, there may be potential to use of M&I water for compact compliance by exchange under current federal statutes, which could benefit instream flows, or provide for endangered species protection.
- The total cost of the repayment is about \$35 million, with an anticipated annual OM&R charge between \$313K and \$375K per year, which translates into a cost of about \$3,350 per acre-foot. This cost is considered quite a deal for M&I water. On the Upper Blue River in Summit County, domestic water is valued as high as \$30,000/acre-foot. A study funded by the Northern Colorado Water Conservancy District looked at developing water within the Yampa River basin for export to the Front Range at an estimated cost of \$11,000/acre-foot.
- Climate change or drought could affect the overall M&I demand for the basin, which is not accounted for in the SWSI gap projections for 2030. Having excess M&I water available in the A-LP Project could accommodate for those variable climate conditions.
- Southwestern Colorado is an area that has experience significant oil and gas impacts (water quality). Severance Tax money is being recommended towards the purchase of Animas-La Plata Project Water, which was specifically created to offset the impacts of oil and gas exploration and extraction. A reliable future source of M&I water could prove to be a very valuable resource to address this issue.

The importance of preserving water resources in the State and in southwestern Colorado in particular, is extremely important. If the State does not exercise its right to purchase its pool allocation that water will revert to the two Tribes and an opportunity will be lost.

Senator Bruce Whitehead is asking the Board to consider approving an amendment to this year's Projects Bill (HB10-1250). The draft legislation would appropriate \$12M out of the CWCB Severance Tax Perpetual Base Account over the next three years towards the purchase of State's ALP pool allocation from the Bureau. The draft wording of this potential legislation is attached.

The Severance Tax Perpetual Base Account is projected to have a balance of \$20 – 30 M for FY 2010-11. This is the remaining balance after the \$2 M transferred this fiscal year and the \$11 million transferred next fiscal year to balance the budget. Therefore, there is enough money to make the proposed transfer next year of \$12 million and still allow for other loans.

The amendment allows the Board the flexibility to determine how much of the water should be purchased. It also provides the Board the authority to purchase the water and then lease or assign its water pursuant to state and federal law.

Recommendation

Staff recommends that the Board approve the proposed amendment.