

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Tim Feehan, P.E., Chief *TF*
Ted Kowalski, Chief *TK*

DATE: May 11, 2010

SUBJECT: **Agenda Item 9, May 18-19, 2010 Board Meeting**
Finance and Interstate & Federal Sections
Animas-La Plata (A-LP) State's Pool Allocation Update

Introduction *(This is for information only and no action is necessary)*

This agenda item is to provide the Board with some general background information and an update on the Animas-La Plata (A-LP) State's Pool Allocation. Staff will continue to update the Board as necessary. Attached for your review and reference is the Board memo that was presented at the Telephonic Board Meeting, dated March 24, 2010.

AL-P Study

In the fall of 2009, the CWCB hired Brown and Caldwell (Consultant) to analyze the needs and potential uses, within the Animas River basin, for A-LP Project water, if the State were to purchase its allocation of 10,460 AF of supply or 5,230 AF of depletions. The Consultant found that there are local providers that have an immediate interest in purchasing up to 1,000 AF (depletions).

The State and the Southwestern Water Conservation District (District) are currently working together to complete Phase II of the Animas-La Plata Water Supply and Demand Study. This effort will examine exchange possibilities, compact issues, climate change impacts, operating, maintenance, and replacement costs, final cost allocation issues, potential federal statute revisions, financing options, and Tribal concerns. The Staff and the District met on March 8, 2010, and by phone conference on May 6, 2010, and have agreed on a final draft scope for the A-LP Phase II Study. A copy of this draft scope is attached to this memo for your review and discussion at the May 2010 Board Meeting. It is the intent of CWCB and Southwestern to complete the Phase II Study by the November 2010 CWCB Board Meeting.

Legislation

On March 29, 2010, the Board held a Telephonic Board Meeting to discuss legislation that would authorize the Board to purchase the State's share of A-LP water. Senator Bruce Whitehead was in attendance and expressed his support for the State's purchase of A-LP water. Senator Whitehead also indicated that if the Board supported the purchase concept, then he would introduce an amendment to the 2010 Projects Bill that would set aside \$12M for 3-years from the Severance Tax Perpetual Base Account, allowing the CWCB to purchase all, or a portion of the State's ALP pool allocation. Senator Whitehead introduced that amendment on April 15, 2010 at the Senate Agriculture and Natural Resources Committee. The Agriculture and Natural Resources Committee passed the amendment and the bill, unanimously, and referred the bill to the Senate Appropriations Committee. The original amendment was amended again, identifying the Severance Tax Perpetual Base Account funds allocated for the A-LP water purchase to be transferred to the Construction Fund, and stating that the first year's \$12M would be appropriated in Fiscal Year 2010/11, with funds being available for disbursement on June 30, 2011. The General Assembly would have to appropriate the remaining \$24M for the purchase of A-LP water during the 2011 and 2012 legislative sessions, which would most likely occur in conjunction with the CWCB's projects bill. Appropriation of the remaining \$24M in A-LP funds is not a given, and will be contingent upon the State's economic health and available budget. The third reading of the 2010 Projects Bill was unanimously approved by the Senate, with amendments as described above, on May 10, 2010. Since the Bill originated in the House, the House will need to approve the amendments made by the Senate before the Bill is final.

At the March 29, 2010 Telephonic Board Meeting, a quorum was reached, and the Board unanimously expressed support for legislation that would authorize the CWCB to purchase the State's A-LP pool allocation. The Board also clarified that this support was contingent on receiving additional information on the short and long term benefits of purchasing the water, which would be presented in the A-LP Phase II Study. Based on the findings presented in the Phase II Study, and any additional information, the Board would make final decisions regarding its support for the water purchase.

Cash Balance Projections – Severance Tax Fund

The Severance Tax Perpetual Base Account is projected to have a balance of \$20-25M for FY 2010-11. The projected balance is based on a \$21M transfer this fiscal year, \$11M projected transfer next fiscal year to balance the budget, and the proposed \$12M A-LP fund transfer.

Exhibit A.
Description of Project and Scope of Work
Animas – La Plata Project Water Marketing Supply and
Demand Study – Phase 2
Durango, Colorado

BACKGROUND

The Animas- La Plata (A-LP) Project was funded by the United States Bureau of Reclamation (USBR) as a municipal and industrial water supply project for the States of Colorado, New Mexico and the Ute Mountain and Southern Ute tribes. The project is located in southwest Colorado. The State of Colorado (State) has an allocation of 10,460 acre-feet (AF) of A-LP Project water (State Water). The State contracted with Brown and Caldwell to conduct an investigation of options for marketing this water to local water providers in the area. The preliminary study (A-LP Phase 1) refined capital repayment costs that would be owed by the State to the United States Bureau of Reclamation and identified water providers in the vicinity that would be interested in purchasing A-LP Project water.

The Colorado Water Conservation Board (CWCB) and the Southwestern Water Conservation District (SWCD) have agreed to jointly fund and conduct Phase 2 of the State Water demand study to evaluate potential water needs in southwest Colorado and Colorado. Phase 2 will build upon the results of Phase 1.

SCOPE OF WORK

Brown and Caldwell proposes to complete the following tasks in A-LP Project Water Marketing Supply and Demand Study – Phase 2 (A-LP Phase 2) to further assist the State with clarifying the amount of A-LP Project water that can be sold to water providers in Southwestern Colorado. In addition, this study will refine the estimated capital and operations, maintenance and replacement (OM&R) costs for this water, and identify additional uses for the State's remaining allocation of A-LP project water.

Brown and Caldwell will work closely with the Southwestern Water Conservation District (SWCD) to identify additional future water demands and other potential uses for A-LP water that apparently cannot be sold reasonably soon to water providers in the area.

Phase 100 – Fully Describe State Water Costs and Supply Criteria

This section of the A-LP Phase 2 study will fully describe the physical and cost aspects of the State Water supply and any restrictions that may be involved. Refining capital repayment and estimated OM&R costs are required to allow marketing of the State Water. Brown and Caldwell will conduct the following tasks to more closely define the capital payment due to the USBR and clarify the components of OM&R payments required by the Animas-La Plata Operation, Maintenance, and Replacement Association (Association)

Refining final capital repayment and estimated OM&R costs are required to allow the State to market the A-LP water supply. Brown and Caldwell will conduct the following tasks to more closely define the final capital payment due to the USBR and clarify the components of OM&R payments required by the Animas-La Plata Operation, Maintenance, and Replacement Association (Association).

Task 001 – Describe Availability of Water from Lake Nighthorse

Brown and Caldwell will review technical studies and evaluations prepared by Reclamation and/or the Association that describe any constraints or requirements regarding physical availability of water from Lake Nighthorse, including:

- Can the State Water be released in any pattern, e.g. constant over the year or all in one month?
- Is the water available in all years or are there shortages?
- Are there physical constraints to releasing water through the outlet works?

Task 002 – Verify Final Capital Cost Allocation with USBR

This task will include:

- A. Brown and Caldwell will meet and confer with USBR to confirm the fiscal year 2011 Project Capital Cost allocation (including interest during construction) developed in A-LP Phase 1.
- B. Brown and Caldwell will attend the USBR meeting tentatively scheduled in July to discuss the repayment schedule for A-LP Project water.
- C. Brown and Caldwell will coordinate with USBR to determine when the State's allocation will revert to the tribes if not paid for by the State.

Task 003 – Update OM&R Costs

- A. Brown and Caldwell will summarize and describe the proposed operations of the Association as related to the State Water. This will include a review of the Inter-Governmental Agreement and governance by the Association's Management Committee, including how to become a member and the rights and obligations of being a member. Also included would be the determination of how the State's single vote on the Management Committee would be divided in the event portions of State Water is sold by the State to third-party entities.
- B. Brown and Caldwell will summarize and describe how the fixed and variable OM&R costs for the A-LP Project are determined. It will also describe how cost obligations will be assessed when water is released from the Lake Nighthorse and any OM&R cost issues related to pattern of water use.
- C. Brown and Caldwell will explain how the OM&R escrow account, consisting of \$1.5 million contribution each from the Southern Ute Indian Tribe and Ute Mountain Ute Tribe, will be operated to pay for variable costs and what variable costs will be paid by the State.

Task 004 – Determine Alternatives for Repaying Project Capital Costs and Paying OM&R Costs

Brown and Caldwell will work with CWCB to develop up to five A-LP Project repayment alternatives based on updated capital costs. Brown and Caldwell will also determine the total cost (capital plus OM&R) for the various repayment alternatives.

Brown and Caldwell will provide CWCB and SWCD with a technical memorandum summarizing Phase 100 when it has been completed.

Phase 200 – Refine Water Demand from the A-LP Phase 1 Study and Develop Buyers' Assistance Program

Task 001 – Refine Water Demand from the A-LP Phase 1 Study

A. Municipal Suppliers Where Little or No Additional Future Water Supply Is Required:

Courtesy letters will be written to the City of Durango, Town of Ignacio, Town of Bayfield, Pagosa Area Water, and Sanitation District and San Juan Conservancy District. These letters will provide notice of the State's intent to market this additional water supply to others.

B. Municipal Suppliers Who Expressed Need for Additional Supply:

Brown and Caldwell proposes to coordinate meetings with CWCB, SWCD and each of the three following water providers who have indicated interest in purchasing A-LP Project water. It is anticipated that these meetings will be held in Durango Colorado

1. La Plata West Water Authority (LPWWA): Brown and Caldwell will coordinate a meeting with the LPWWA in Durango to discuss the LPWWA's April 2009 letter and its ability to fund and construct the facilities to use the A-LP Project water.
2. Lake Durango Water Authority: Brown and Caldwell will coordinate a meeting with the LDWA in Durango to discuss the interest and ability to fund and construct the facilities to use the State Water. LDWA is in the process of conducting a master plan to evaluate the future water needs.
3. La Plata Archuleta Water District (LPAWD): Brown and Caldwell will coordinate a meeting to be held with the LPAWD board and its consultants to explore ways to utilize the State Water.

Task 002 – Municipal Water Supply Purchasers' Assistance Program

Utilizing the information gained concerning federal and state funding, Brown and Caldwell, together with CWCB and SWCD, will design financing programs and other programs as further defined below for identified potential purchasers of A-LP Project water to assist them in acquiring a share of the State's allocation thereby increasing sales of the State's share of A-LP Project water. This program could include: providing assistance in obtaining loans and grants from Federal sources for pumping, conveyance and water treatment facilities and using available state funds including the CWCB loan fund to facilitate implementation of required facilities for pumping, conveyance, and treatment of the A-LP Project water. With

policy direction from CWCB, Brown and Caldwell will provide the necessary staff to implement this task.

Brown and Caldwell will provide CWCB and SWCD with a technical memorandum summarizing Phase 2100 when it has been completed.

Phase 300 – Develop Joint Program with SWCD and CWCB for Marketing A-LP Water for Purposes In Addition to the Municipal Water Supply for Providers Identified in A-LP Phase 1

The objective of this program is to market the remaining portion of the State's allotment of A-LP Project water not need to meet local water needs.

As part of the effort in setting up a joint program with the SWCD and CWCB, Brown and Caldwell will work with the Southwestern District to expand the list of possible municipal water purchasers of the State's share of A-LP Project water that can be reached by exchange or direct diversion. These potential municipal purchasers will be subsequently contacted and efforts made to assist these potential customers with acquiring a portion of the State's share for municipal use.

Task 001 – Identify Additional In-Basin Demands for A-LP Water in Coordination with CWCB

Brown and Caldwell will identify additional water demands by conducting the following tasks:

- A. Work with CWCB to review updates to the Statewide Water Supply Initiative (SWSI) to determine if there is additional unmet future demand within the currently identified study area. Any identified water providers with additional demand will be contacted.
- B. Review the draft Colorado River Water Availability Study to determine if there are additional unmet demands identified in the Colorado River Basin.

Task 002 – Identify Additional Demands Which Could be Satisfied by Exchange of A-LP Water in the Dolores/San Juan/San Miguel and Colorado River Basins

Brown and Caldwell will conduct an engineering exchange analysis for the Dolores/San Juan/San Miguel and Colorado River Basins to determine the potential for exchanging A-LP Water in these basins.

Task 003 – Determine the Potential to Use A-LP Water to Eliminate Priority Call on Junior Reservoirs

Using the results of the exchange analysis, Brown and Caldwell will work with Colorado Attorney General's office, SWCD, CWCB, and Colorado State Engineer's Office to determine the feasibility to use A-LP water to eliminate priority call on junior reservoirs such as McPhee, Vallecito, Lemon and Summit.

Task 004– Colorado River Compact Compliance

Using the results of the exchange analysis, Brown and Caldwell will work with Colorado Attorney General's office, CWCB, and Colorado State Engineer's Office to determine the feasibility to use A-LP water to meet Colorado's obligation under the Colorado River Compact during droughts.

Task 005– Climate Change Analysis

Brown and Caldwell will work with SWCD, CWCB, and Colorado State Engineer's Office to examine the feasibility for using A-LP to meet long-term potential shortages resulting from reduced supply due to climate change.

Task 006 – Identify Legal Issues That Could Affect the Use of A-LP Project Water:

- A. Brown and Caldwell, CWCB and SWCD will work with the State Attorney General's office to identify legal issues that may limit potential uses of A-LP Project water.
- B. Examine hurdles to changing Federal law to expand uses of A-LP water. This may result in recommending legislation to allow additional uses of A-LP water beyond municipal use.

Task 007 – Develop Marketing Program

Brown and Caldwell will recommend actions required to sell water to entities with additional water demands. This will include quantifying demand, identifying timeline of when water is needed, and identifying necessary regulatory and legislative changes required to utilize the State's allocation of A-LP Project water.

Brown and Caldwell will provide CWCB and SWCD with a technical memorandum summarizing Phase 300 when it has been completed.

Phase 400 – Evaluate Option of Leasing if State Water Reverts to Tribes

The Southern Ute Indian Tribe and the Ute Mountain Ute Tribe have indicated a willingness to discuss a lease back arrangement to the State or other third-party entities in the event the State Water reverts to the Tribes. This section of the Phase 2 study would evaluate the lease terms, to the extent possible proposed by the Tribes, and any other restrictions. The tasks are outlined below.

Task 001 – Contact Tribal Representatives

Brown and Caldwell will contact and work with Tribal representatives to evaluate how the Tribes and non-Indian water users could cooperate if the State Water reverted to the Tribes. Brown and Caldwell will also outline terms of potential lease to non-Indians by the Tribes.

Task 002 – Evaluate Potential Restrictions if Tribes Hold State Water

Work with the Attorney General's office and SWCD to determine how water rights, decrees and existing legislation may affect use of State Water by Ute tribes if the State Water reverts to the Ute tribes.

Brown and Caldwell will provide CWCB and SWCD with a technical memorandum summarizing Phase 400 when it has been completed.

Phase 500 - Final Report

Brown and Caldwell will provide a draft report to CWCB and SWCD which will: (1) Summarize the expected sales of 10,460 AF of all or a portion of the State's A-LP Project water and (2) describe alternatives for dealing with the remaining component of A-LP Project water after expected sales. Comments and changes provided to Brown and Caldwell by the State will be incorporated into the final report. Ten (10) copies of the final report will be provided to each CWCB and SWCD, along with a CD of all report documents, engineering calculations, and data used to complete the project.

Phase 600 - Project Management

This phase will include bi-weekly project progress conference calls, development of a project schedule and invoicing of project.

SCHEDULE

Brown and Caldwell is prepared to begin working on this project immediately upon receipt of the signed contract authorizing the work. Per discussions with the State, it is anticipated that this project will begin the first week of June 2010. A draft report will be provided to the CWCB and SWCD by September 10, 2010. Comments should be returned to Brown and Caldwell by October 1, 2010 and a final report will be provided to CWCB and SWCD by November 19, 2010.

PROJECT TEAM AND QUALIFICATIONS

Leo M. Eisel, Ph.D., P.E., Executive Engineer

Dr. Eisel has 39 years of experience in the area of water resources engineering and management. His resume is attached. He has testified on two different occasions in the Animas-La Plata litigation and is quite familiar with water markets in southwestern Colorado. He is a recognized water appraiser in Colorado and has done other economic investigations related to water (see resume). His formal economic training includes a minor in economics in his Ph. D. studies at Harvard University.

Laura Chavez, Water Resource Analyst

Laura Chavez has 13 years of experience in water resources management. Ms. Chavez has extensive knowledge in water rights, regulatory compliance and permitting issues, especially related to water supply and artificial recharge, water conservation, and the coordination of regional planning coalitions

D. Randolph Seaholm, Contractor to Brown and Caldwell

Randy Seaholm has nearly 36 years of experience in Colorado water resources management as former employee of the CWCB. Mr. Seaholm's knowledge of the study area and history of the A-LP will benefit the project.

Exhibit B. Fee

OWB SW CD - ALP Phase 2

										Travel and Expenses	Randy Seaholm			
											Cost	Total Expense	Total Effort	
		\$123.00	\$90.00	\$199.00	\$90.00	\$199.00	\$106.00	\$57.00						
100	State Water Cost and Supp	23	0	41	0	0	0	0	64	10,988	1,000	3,600	5,060	16,048
001	Availability in Lake Nighthors	8	0	4	0	0	0	0	12	1,780	0	0	0	1,780
002	Verify Capital Costs	0	0	16	0	0	0	0	16	3,184	1,000	0	1,100	4,284
003	Update OM&R Costs	0	0	8	0	0	0	0	8	1,592	0	3,600	3,960	5,552
004	Repayment Alternatives	15	0	13	0	0	0	0	28	4,432	0	0	0	4,432
200	Refine Demand from Phase	44	0	34	0	0	0	0	78	12,178	0	0	2,200	14,378
001	Refine Demand	24	0	24	0	0	0	0	48	7,728	2,000	0	2,200	9,928
002	Buyers Assistance	20	0	10	0	0	0	0	30	4,450	0	0	0	4,450
300	Find New Buyers	120	0	79	44	0	0	60	303	37,861	0	6,300	6,930	44,791
001	Additional Basin Demands	16	0	8	0	0	0	0	24	3,560	0	600	660	4,220
002	Exchange Study	14	0	14	20	0	0	60	108	9,728	0	900	990	10,718
003	Junior Reservoirs	16	0	16	8	0	0	0	40	5,872	0	1,800	1,980	7,852
004	Compact Compliance	12	0	12	8	0	0	0	32	4,584	0	1,500	1,650	6,234
005	Climate Change	16	0	6	8	0	0	0	30	3,882	0	0	0	3,882
006	Legal Issues	16	0	12	0	0	0	0	28	4,356	0	600	660	5,016
007	Marketing Program	30	0	11	0	0	0	0	41	5,879	0	900	990	6,869
400	Leasing from Tribes	24	0	17	0	0	0	0	41	6,335	0	1,200	1,320	7,655
001	Contact Tribal Reps	8	0	4	0	0	0	0	12	1,780	0	0	0	1,780
002	Eval Restrict of Tribal Use	16	0	13	0	0	0	0	29	4,555	0	1,200	1,320	5,875
500	Final Report	18	0	8	0	0	8	0	34	4,654	0	750	825	5,479
600	Project Management	20	8	10	0	4	0	0	42	5,966	0	0	0	5,966
	GRAND TOTAL	249	8	189	44	4	8	60	562	77,982	1,000	11,850	16,335	94,317

Hours and Dollars are rounded to nearest whole number. To display decimals, change the format of the cells.