

# STATE OF COLORADO

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## Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski, Chief, Interstate and Federal Section

DATE: September 2, 2010

SUBJECT: **Agenda Item 18: September 13-15, 2010 Board Meeting**  
Interstate & Federal Section – Colorado River Issues

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Bill Ritter, Jr.  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

### Background

Over the last several months, Director Gimbel, the Interstate and Federal Section, Alexandra Davis of the Department of Natural Resources, and the Colorado Office of the Attorney General have been involved in a number different processes related to the management of the resources associated with the Colorado River system. Some of these processes may have effects on pending litigation or on other processes. To the extent that the pending litigation or future legal questions may be implicated, the Board will have an opportunity during the Executive Session to ask questions of legal counsel. However, some of the current issues are policy issues that merit public discussion. Following is a brief update about several of the key topics that are time sensitive and require the Board's attention and input.

The key topics described further below are the Annual Operating Plan, the Glen Canyon Dam Adaptive Management Workgroup, the High Flow Experiment Protocol, and the Basin Fund.

### Staff Recommendation

The Staff seeks the Board's input on the topics provided below.

### Additional Background

#### Annual Operating Plan

Every year, pursuant to Section 602 of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), the Bureau of Reclamation reports on the past operations and the projected operations and releases for certain Colorado River reservoirs within the basin. This report is referred to as the Annual Operating Plan ("AOP"). Procedurally, the Bureau of Reclamation holds three distinct work group meetings with interested stakeholders. The first two meetings have occurred and the final meeting is scheduled for September 24, 2010. It is worth noting that the projected potential releases from Lake Powell could vary from a low of 9.0 million acre-feet ("maf") (which would occur due to a balancing operational situation) to a high of 14.1 maf (which would occur due to an equalization operational situation). The difference between these two operational regimes is more than 5 maf, and which operational regime will be

used will be highly dependent on the amount of inflow into Lake Powell. The management of such a wide range of potential annual release volumes from Lake Powell will be made more difficult by the “fall steady flow experiment” (wherein releases from Lake Powell are held steady in the months of September and October) being conducted under the Adaptive Management Work Group (AMWG). The most recent version of the draft 2011 AOP included for the possibility that equalization releases may need to occur into the following water year. In the context of all of this uncertainty, the Bureau of Reclamation has recently included the following newly introduced language, which currently is in the Purpose section:

Congress has charged the Secretary with stewardship and responsibility for a wide range of natural, cultural, recreational, and tribal resources within the Colorado River Basin. The Secretary has the authority to operate and maintain Reclamation facilities within the Colorado River Basin addressed in this AOP to help manage these resources and accomplish their protection and enhancement in a manner fully consistent with applicable provisions of federal law including the Law of the River, and other project-specific operational limitations.

On behalf of the State of Colorado, I recently objected to this language as being unnecessary and confusing the purpose of the AOP with other Secretarial authorities. I requested that this language be stricken. Alternatively, I suggested that the Bureau of Reclamation eliminate the words “stewardship and” in the first sentence and modify the second sentence to indicate that the Secretary’s authority to manage the resources is “subject to applicable provisions of federal law including the Law of the River...” rather than “in a manner fully consistent with applicable provisions of federal law including the Law of the River...” Many other states and stakeholders agreed that this language should be eliminated. Some states and stakeholders voiced support for moving the language, if it is kept, to the background section. In addition, some stakeholders voiced support for Colorado’s changes if the language were to remain.

#### Glen Canyon Dam Adaptive Management Work Group

Director Gimbel sits on a 25 member federal advisory committee for the Secretary of the Interior. The Adaptive Management Work Group (“AMWG”) was established pursuant to an Adaptive Management Program that was implemented as a result of to the 1996 Record of Decision (“ROD”) on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with the requirements of the Grand Canyon Protection Act of 1992. The AMWG is charged with making recommendations on budgets, scientific experiments, and other work that will advance the purposes of the Grand Canyon Protection Act. This year, the Department of the Interior and the Department of Energy: Western Area Power Administration proposed operating hydrograph recommendations for Glen Canyon Dam for AMWG’s consideration and comment. This hydrograph was developed with the key fundamental principle articulated as: “conservation of sand resources within the Colorado River ecosystem.” The hydrograph was developed within the framework of the 1996 ROD and continues implementation of the Modified Low Fluctuating Flow (“MLFF”) alternative. This hydrograph proposed operational constraints that relate to proposed monthly flow release volumes. This proposed framework was very similar to operations that occurred in other recent years.

The Departments of the Interior and Energy conducted several phone calls with the AMWG and the Technical Work Group (“TWG”) regarding the proposed hydrograph. The States and various stakeholders raised a number of questions and concerns, which were either answered or addressed. The Departments of the Interior and Energy provided documentation about the expected impacts that the proposed operations may have on other resources. The AMWG, at the

August 24-25, 2010 meeting, voted to recommend to the Secretary a proposed hydrograph that was substantially similar to the original one proposed by the Departments of the Interior and Energy.

#### High Flow Experimental Protocol

In December 2009, Interior Secretary Salazar announced his intention to develop a High Flow Experimental Protocol (“HFE Protocol”), with appropriate environmental compliance, so that the Department of the Interior could operate Glen Canyon Dam to allow for high flow experimental releases when the appropriate Colorado River conditions existed. In the spring, Colorado joined other states in submitting scoping comments and in June 2010, the Upper Colorado River Commission became a cooperating agency in response to the Department of the Interior’s announcement of an Environmental Assessment (“EA”) for the HFE Protocol. The Commission has negotiated a Memorandum of Understanding related to this EA. The Department of the Interior has announced their intention to release a draft EA by November 8, 2010, with a final decision by March 2011. This could be beneficial because it will allow the Department of the Interior to incorporate information that is being synthesized, from the previous three High Flow Experimental releases, in a “Synthesis Report” that will be out for review in December 2010. The Staff has meetings this week about the HFE Protocol, and we will inform the Board about the information that we receive from those meetings.

#### Basin Fund

In 1956, Congress enacted the Colorado River Storage Project Act (CRSPA). One of the purposes of CRSPA is the “comprehensive development of the water resources of the Upper Colorado River Basin.” CRSPA also allows the use of hydroelectric power revenues to aid in the development and repayment of certain irrigation costs of participating projects with the Upper Colorado River Basin (“aid to irrigation”). In CRSPA, Congress developed a method to apportion funds to each of the Upper Division States based on the following percentages: Colorado 46%, Utah 21.5%, Wyoming 15.5%, and New Mexico 17%. For a number of reasons, the existing apportionment method has resulted in the collection of revenues for aid to irrigation beyond what is needed to repay the irrigation components of the irrigation projects authorized under a different section of CRSPA. It is important to note that CRSPA also allows an Upper Division State to consent to the use of revenues collected by one state to be used in another Upper Division State. Because of this existing situation, the Upper Division States, the Colorado River Energy Distributors Association (CREDA), the Bureau of Reclamation, and the Western Area Power Administration have been exploring whether there might be opportunities to reduce the CRSPA service rate, and allowing some of the surplus revenue to be used for the benefit of existing projects. For clarification, CREDA is a non-profit corporation which represents its members in dealing with the Bureau of Reclamation and the Western Area Power Administration, specifically with CRSP resource availability and affordability issues. The members of CREDA are non-profit organizations, serving four million consumers in six western states, and these members purchase over 85% of the CRSP power resource. This issue is under discussion, but an agreement about how to effectuate these mutually beneficial purposes could proceed very quickly. Director Gimbel has been the key point of contact on this issue, and we would like to discuss the opportunities, and answer any questions that you may have, at the upcoming Board meeting.