

**Interbasin Compact Committee
December 1, 2010
The Sheraton Denver West
Lakewood, CO
Meeting Summary**

Attendance

Members

Dan Birch	Taylor Hawes	Mike Shimmin
Marc Catlin	Melinda Kassen	Travis Smith
Carlyle Currier	Rod Kuharich	Carl Trick
Jeris Danielson	Eric Kuhn	Wayne Vanderschuere
Alex Davis	Peter Nichols	Steve Vandiver
Jeff Devere	Mark Pifher	Sen. Bruce Whitehead
T. Wright Dickinson	John Porter	Eric Wilkinson
Rep. Randy Fischer		Jay Winner

Staff

Heather Bergman – Peak Facilitation	Jennifer Gimbel – CWCB Mikaela Gregg – Peak Facilitation	Mike King – DNR Sue Morea – CDM Nicole Rowan – CDM
Jacob Bornstein – CWCB	Eric Hecox – CWCB	Dick Wolfe – DNR
Viola Bralish – CWCB	Greg Johnson – CWCB	
Todd Doherty – CWCB		

Members of the public were in attendance.

Introduction and Goals (Alex Davis)

- The purpose of the Interbasin Compact Committee (IBCC) is to change the conversation about water in Colorado. We have begun to do that in a way that is starting to gain a lot of attention and raising similar conversations in other arenas. This is a good sign; it will create more leverage.
- Members of the IBCC have recently received several letters from special interest groups. These letters generally addressed: 1) specific suggestions on language in the Identified Projects and Processes (IPPs) Subcommittee document and general objection to content and ideas in that document, and 2) suggestions or complaints about the process. It is important to recognize that there will be push-back, but we need to remember the progress that we have made and our larger purpose.
- It is extremely significant and important that we maintain our focus on all the elements as a package of interconnected pieces.
- This is our final meeting of the year with the purpose of finalizing our letter to the Governors and determining where we are going next.
- It is important to be comfortable with what the letter says, not necessarily how it says it. It is a compilation of many voices, and it is okay to have all different voices in the letter as long as the content is strong.

Discussion Highlights: Subcommittee Documents

Identified Projects and Processes (IPPs)

The IBCC agreed to the IPP Subcommittee document outlining the role of the State in IPPs at the last meeting. No further conversation regarding changes is needed. Comments received from interest groups outside the IBCC will be addressed during the larger public engagement process in 2011.

New Supply Development

Mark Pifher provided a summary of the New Supply Subcommittee's work to date. The current document represents many points of view that the Subcommittee tried to accommodate into this draft; it is not a consensus piece but it is representative of the different concepts within the dialogue. Some people may view part of this document in isolation, but this is not the way it should be addressed. This document is part of the larger package and includes many interrelated pieces. We cannot talk about new supply in a vacuum. The conversation has to include all the issues as a package in order to move forward. Key components of the New Supply Development Subcommittee document include:

- *Grandfather clause*: Further consideration is needed regarding which IPPs, if any, need to be grandfathered in because they are further along than others.
- *Agriculture*: If we do not talk about imposing the same kinds of requirements for permanent agricultural transfers, then we make them the default source of water, which is inconsistent with trying to balance the needs of all the stakeholders.
- *Trigger*: The concept of a trigger is the idea that at some point it may be necessary to either curtail new diversions or offset them. The trigger would allow an avenue for back-up supplies, a water bank, other contracts, or storage that could be used as a fallback. The Subcommittee has not determined or agreed on what the trigger is going to be and when it will be pulled. There are legal impediments on how to handle these issues, so more work will be needed on the concept of a trigger. Everybody has a stake in a Compact call, and we need to deal with that fairly so no project is in worse shape than another. How do we put this together so everyone has the same level of protection, while we also protect existing water rights?
- *1041*: Increased regulatory certainty remains an important issue in the package. Although it is controversial and challenging, taking it out of the document will not make it go away.

A member of the IBCC suggested that the group incorporate issues of concern into the document and acknowledge them so the conversation can move forward. This approach would be preferable to removing controversial items because there are differences in opinion regarding how they should or should not be dealt with. The IBCC generally accepted this approach, and it is reflected in the final report to the Governors.

Questions and Comments: New Supply Development Document

Members of the IBCC had several questions and comments about the New Supply Development document.

- This approach appears to create two classes of water users, which has no basis in law. How would this approach be administered? A more reasoned and equitable approach is needed.
- Would this approach be administered basin by basin?
- How would this approach be administered through the Upper Colorado River Compact?

- Several members of the IBCC indicated that they could agree to the New Supply document with certain changes. These were articulated in the form of “yes, if...” The list of specified contingencies or “ifs” included:
 - Issues of dissent need to be included in the document and “creating new conversations with the agricultural community” should be added to the ‘to-do’ list.
 - There needs to be some protection to not add risk to existing projects in the Colorado River basin.
 - There needs to be a degree of predictability and confidence included in the document.
 - Experience and examples from other basins need to be used when formulating how these issues might be worked out.
 - The document should explain how the basin roundtables will be included on all the issues (an item to add to the ‘to-do’ list).

In addition to the above agreements, the IBCC identified several changes to the New Supply document that are reflected in the final letter and report from the IBCC.

NonConsumptive Needs

Taylor Hawes provided a summary of the NonConsumptive Needs Subcommittee’s work. The goal of the Subcommittee was to outline some of the common ground that the IBCC found at past meetings and push these ideas further, integrating long- and short-term strategies.

Questions and Comments: NonConsumptive Needs Document

Members of the IBCC had several questions and comments about the NonConsumptive Needs document.

- This document should support utilizing the CWCB and their statutory authority. Several items in this document are implementable through the CWCB, and the IBCC should stress the value of expanding in this direction. There are things that are already in place that should be built on; the document should build on those things.
- Is there a way to put language in the document acknowledging that project proponents are taking care of the environment better than in the past?
- This document was not intended to solve all issues in project planning. The intent is to acknowledge that the environment is an important element that needs to be integrated into the vision for the state.
- It would be good to have an additional guiding principle to recognize the interplay of nonconsumptive benefits and agricultural practices.
- Addressing nonconsumptive needs is a ground-up process, and therefore the roundtables should lead the effort to address the nonconsumptive needs. The document should include an articulation of the plan for engaging roundtables and their role in addressing consumptive and nonconsumptive needs.
- The document needs to outline a plan for disseminating this information to the basin roundtables and facilitating a conversation with the roundtables about how to produce better action and planning.
- The document needs more emphasis on how there can be collaborative efforts among diverse interests and stakeholders to develop multi-purpose projects. There needs to be a more active role to collaborate and bring money to the table to restore environments.

- It would be helpful to add another guiding principle that recognizes the relationship between environmental and recreational opportunities that exist only because of return flows that come mainly from irrigation. This is an issue that the basin roundtables should be encouraged to discuss.

To address the questions and concerns above, the IBCC identified several changes to the NonConsumptive Needs document that are reflected in the final letter and report from the IBCC.

Conservation

Wayne Vanderschuere summarized the work of the Conservation Subcommittee. The main objective of the Conservation document is to delineate between issues that have general agreement and understanding (those that should be moved forward) and issues that need further investigation and discussion. The Subcommittee wanted to take the discussion beyond the studies and give recommendations beyond the technical. Most of the Subcommittee's work was done on wording to make it less top-down. The concepts have not changed much since the last IBCC meeting.

Questions and Comments: Conservation Document

Members of the IBCC had several questions and comments about the Conservation document.

- It is extremely significant and important that these discussions and documents are being created by the IBCC and not the CWCB.
- The Subcommittee is under no illusion that implementing statewide mandates for codes are going to be a popular and easy topic, but some of these things will not happen without statewide mandates.
- The document should clarify that it refers to consumptive use; it needs to be consistent with water rights and existing law.
- It is not clear how this document relates to the work plan for 2011. What is the path forward?
- A lot has already been done on this topic. Somehow, the document should recognize that.
- The potential for applying conserved water from agriculture to the gap is very low, yet there are a large number of people who believe that focusing on agricultural conservation is the way to go. More work is needed to educate people about agricultural water use and how return flow works. The idea of diversion is a false hope under Colorado law. You cannot take a reduced diversion from efficiency and direct it to anyone other than the next junior downstream.
- It would be good to add a footnote regarding covered entities. The goal is to have more entities included.

To address the questions and concerns above, the IBCC identified several changes to the Conservation document that are reflected in the final letter and report from the IBCC.

Alternative Agricultural Transfer Methods

Peter Nichols summarized the work of the Subcommittee addressing Alternative Agricultural Transfer Methods (ATMs). The focus of the Subcommittee was to address what could be done to try and make it easier to do temporary transfers rather than long-term transfers. The current document reflects a sense of where the Subcommittee is able to make recommendations in terms of ATMs as a robust part of the package to minimize future long-term and non-retractable transfers. Some of the Subcommittee's work builds on the Alternative Agricultural Transfers Task Force initiated by CWCB. The Task Force has done a great deal of stakeholder engagement and involvement on this issue.

Questions and Concerns: Alternative Agriculture Transfer Methods Document

Members of the IBCC had several questions and comments about the Alternative Agricultural Transfer Methods document.

- Fallowing and interruptible supply have been addressed, but there is nothing in the document about water banking (i.e., making the same kind of fixes as proposed so that the interruptible supply statute could be used).
 - This is a long-term fix to look at why the statute has not been successful so far and what could be done to fix this.
 - Following the idea that we do not need to change the law to get done what we need, the Subcommittee did not address this intentionally because it has not been used and these programs need to be done by the people that are going to get them done. Changing laws has the potential to counteract the process. This will be an issue at some point, but maybe not one that needs to be on the table now. This should be on the 2011 'to-do' list.
- There seems to be an attempt to link the temporary approval process from the State Engineer to something else and eliminate the need to go to water court. How are these going to interrelate?
 - The intent is to allow for administrative approval for a longer time rather than have to go to water court, as it is clear that the transaction costs for going to water court are astronomical and potentially not feasible (administration of a temporary lease in addition of the long-term agreement).

The IBCC did not identify any specific changes needed for the Alternative Agricultural Transfer Methods document.

Following the discussion with Governor Ritter that is summarized below, the IBCC revisited the subcommittee documents and made additional changes to improve clarity and readability. The IBCC members agreed that these documents will be considered final and agreed upon by all IBCC members under the following conditions:

- Staff and the facilitator will do some additional "polishing" work to ensure the professionalism, consistency, and cleanliness of the document.
- Members of the IBCC will have one last opportunity to review the document before it is submitted to the Governors and released to the public.
- The final review process will include edits and clarifications to the 2011 work plan.

Note: The final IBCC Report and letter to the Governors is available online at:

<http://cwcb.state.co.us/about-us/about-the-ibcc-brts/Pages/main.aspx>

The discussion with the Governor is available at:

<http://cwcb.state.co.us/about-us/about-the-ibcc-brts/Pages/StatewideRoundtableSummit.aspx>

Discussion with Governor Ritter

Governor Bill Ritter joined the group for a brief discussion about the water issues facing the state and the potential strategies for addressing them that are outlined in the IBCC report. The Governor began the discussion with some introductory remarks. This was followed by a discussion with the IBCC.

Introductory Remarks from the Governor

- The issue of water is at the top of the list that has been shared with the Governor-Elect. Much of the hope of the future of the state has to do with dealing with this issue. If ever there was an issue with competing interests and a scarce commodity, this is it. The future of the state and the quality of life rest upon a statewide vision and having everyone recognize the interests.
- You can't make it rain; we've done as much as we can with the Colorado Compact as well as other interstate treaties. We have a scarce commodity, added to the projected growth of the state--it is understood that with these elements we can't get where we want to be by doing nothing. If we do nothing, what we get are agriculture transfers for M&I to meet future demands.
- While we have prided ourselves on local control, we now recognize the need for a statewide vision. Without a vision, we become less of an agricultural state and more of a state that predominantly uses water for M&I, which is not our heritage.
- Regarding conservation, we are getting to where water boards appreciate the need for conservation while thinking about options and moving forward. We have a growing sense of the issues and the IBCC's work has been a great influence on advancing this.
- With IPPs, it is important to look at how these projects help meet current and future demands. This gap and need won't happen just in 2050 but along the way. Water storage projects are issues that still need to be addressed, but we have made progress and gotten to the place where we recognize the need and importance.
- We can't allow it to become just about old fights between West Slope and East Slope. We have to reinvent this; the dialogue has to broaden the way the issues and self interests are thought about. Thank you for this significant public service; it is really important work. We have moved the ball in terms of legislation, but some things require greater vision, collaboration, and dedication. Thank you and continue.

Discussion with Governor Ritter¹

IPPs

- *Question from the Governor:* What would you need and expect from a governor?
- *IBCC Member Response:* We need the State to somehow take a 'can do' attitude to try to flesh out a sequence so that the State is engaged in the process to help guide and not undermine projects moving forward. Currently the State does not weigh in until the permitting is done. This document recommends a process for earlier involvement from the State.
- *Suggestion from the Governor:* Make a timeline outlining where the State should be engaged, how a project unfolds through the process, what the government participation should be, and where it would be most helpful to weigh in.

NonConsumptive Needs

- *Comment from the Governor:* Funding is the most difficult issue in this area. Our case load increases more than the revenue. We have tried to protect as much as we can, but it is very difficult and it will remain so for some years. But I encourage you to stay in the forefront, as this seems to be a cyclical issue that will come round and be open for greater impact.

¹ Note: Questions, comments, or responses from IBCC members in this summary of the discussion with Governor Ritter do not necessarily reflect the ideas, values, or preferences of others on the IBCC.

- *Suggestion from the Governor:* The IBCC should consider looking at what was done with respect to the approach taken on the rafter/landowner controversy. We passed a bill on what rights a rafter has on a river. The resolution is to take these issues on river-by-river, stream-by-stream basis to address the ambiguity and mediate with representation from both sides to find a place of common ground.
- *Suggestion from the Governor:* It might be useful to look at climate change and projected impacts on rainfall and precipitation. We found that you can't look at water issues separate from climate change.

Conservation

- *Comment from the Governor:* A University of Denver panel on water found that greater water conservation in the agricultural community was a significant option for new water supply. There are limited ways to conserve in agriculture, and it is a complex issue. The point is that a little can mean a lot and that if we can look to be at least conservation-minded, we should, and therefore this is an important part of conversation.
- *IBCC Member Response:* People do not always know that water that is not consumed from agriculture becomes return flows that are available to the next holder of a water right. There is more dialogue to be had on this issue, but it is also important to educate people about the reality of the water sources and options.
- *Question from the Governor:* Regarding plumbing code changes, was local government involved? Colorado Counties, Inc. (CCI) should be engaged and encouraged to join in the conversation to help address the issues of codes.
- *IBCC Member Response:* Engaging in further discussions with counties and others will likely be needed in 2011 or beyond.

New Supply Development

- *Comment from the Governor:* Regarding the 1041 issue, we were able to wade through it on other topics, so it is possible. Please continue to look at this.
- *Comment from the Governor:* The trigger issue is a great idea.

Note: The IBCC and the Governor did not explicitly discuss the document on alternative agricultural transfer methods during the meeting.

Next Meeting

The next IBCC meeting will be held on Friday, February 4, 2011, at the Warwick Hotel in Denver.