

# Colorado Water Conservation Board

## Department of Natural Resources

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TO: Colorado Water Conservation Board Members

John W. Hickenlooper  
Governor

FROM: Suzanne M. Sellers

Mike King  
DNR Executive Director

DATE: March 4, 2011

Jennifer L. Gimbel  
CWCB Director

**SUBJECT: Agenda Item 20, March 15-16, 2011 Board Meeting  
Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960  
Multiple Property Documentation Form**

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### Background

In January 2011, History Colorado issued a working draft of its context document *Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960 Multiple Property Documentation Form* for public comment. The purpose of this document is to provide an historical context for Colorado's ditches and canals. History Colorado emphasizes that this document "does not nominate any individual properties to the National Register of Historic Places, nor does it place any restrictions or regulations on any properties". Despite History Colorado's efforts to clarify the purpose of the document, some concerns still exist within Colorado's water community.

Representatives from History Colorado will provide a presentation to the Board on the National Register, the National Historic Preservation Act and the subject context document during the upcoming CWCB meeting. This presentation along with a question and answer period is designed to educate the Board about the context document and its impact on Colorado's water projects, ditches and canals.

Attached for your review is an information sheet provided by History Colorado. If you would like more information on the National Register and the National Historic Preservation Act or would like to review the context document *Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960 Multiple Property Documentation Form* you may go to History Colorado's website (<http://www.coloradohistory-oahp.org/programareas/register/registers.htm>).

### Staff Recommendation

Staff recommends that the Board either take no action or direct Director Gimbel to send a comment letter to History Colorado. Attached to this memo is a draft letter for the Board's consideration and input. Also attached to this memo is a draft letter that will be submitted to History Colorado on behalf of the Colorado Water Congress.

Attachments

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March \_\_, 2011

Heather L. Bailey, Ph.D.  
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History Colorado  
1560 Broadway, Suite 400  
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John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

**Subject: Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960  
Multiple Property Documentation Form**

Dear Dr. Bailey:

On behalf of the Colorado Water Conservation Board (CWCB), I would like to thank you and your colleagues for presenting information on the National Register, the National Historic Preservation Act and History Colorado's *Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960 Multiple Property Documentation Form* (Ditch and Canal MPDF) at our March 2011 Board meeting. The information you presented and the question and answer period was very enlightening and helpful.

I understand that you have agreed to accept comments from the CWCB after your March 15, 2011 deadline. Although your presentation addressed many of the CWCB's initial concerns, I am providing the following comments on the Ditch and Canal MPDF on behalf of the CWCB.

The Ditch and Canal MPDF refers to many of Colorado's water projects, ditches and canals by name. Additionally, the document includes a detailed description of various ditch and canal technology (lining, headgates, flumes, pumps, measuring devices, sprinklers, etc.) and associated structures (bridges, maintenance shops, houses, mills, etc.) used in Colorado over the years. The CWCB understands that these references in no way recommend these named structures or indicate that specific technologies are indicative of structures that are eligible for the National Register of Historic Places. However, the CWCB is concerned that in the event that a water project, ditch or canal undergoes a consultation under Section 106 of the National Historic Preservation Act, those structures may be seen as historically significant by mere mention of its name or its associated technology or structure in the Ditch and Canal MPDF.

Additionally, the Ditch and Canal MPDF contain Significance Criteria that would be used to determine eligibility for the National Register of Historic Places. Some of these Significance Criteria are written so broadly that any ditch or canal structure in Colorado would qualify for the National Register provided that the structure has maintained its integrity. The CWCB understands that while a finding of eligibility under Section 106 of the National Historic Preservation Act is not intended to create an onerous burden for the structure owner, it does create additional paperwork for the owner.

To alleviate these concerns the CWCB recommends that History Colorado either abandon finalizing the Ditch and Canal MPDF, or alternatively, the CWCB recommends that you incorporate the following suggestions:

- Obtain written consent from the owners of each water project, ditch and canal structure mentioned in the Ditch and Canal MPDF or leave the name of those structures out of the context document.
- Provide a specific and clear disclaimer in the Ditch and Canal MPDF that indicates that mere mention of a project, canal, ditch, specific technologies or associated structures is not indicative of historical significance but is provided as context only.

Again the CWCB would like to thank you and your colleagues for taking the time to present this information to the Board. Please feel free to contact Suzanne M. Sellers of my staff if you have any questions.

Best regards,

Jennifer L. Gimbel, Director  
Colorado Water Conservation Board

cc: CWCB Members



## HISTORY *Colorado*

### ***Irrigation and Water Supply Ditches and Canals in Colorado MPDF***

In an effort to clarify the intent and evolution of the *Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960* Multiple Property Documentation Form (MPDF), several parties have requested additional background on this project. This context has been in development for a decade, first issued for comment as an MPDF in 2006 and again at the end of 2010. The MPDF does not nominate any individual properties to the National Register of Historic Places, nor does it place any restrictions or regulations on any properties. The Multiple Property Documentation Form simply serves as a basis for evaluating the National Register eligibility of related properties.

In 2001, while serving as the Associate Dean of Research at University of Colorado's College of Architecture and Planning, Dr. Michael Holleran applied for and was awarded a grant from the State Historical Fund to develop a context study for Colorado ditches. When he completed that context in 2005, he then worked with the Office of Archaeology and Historic Preservation to formalize that context into the Multiple Property Documentation Form framework, thus making his research useable for any property owners who wanted to nominate their ditch-related properties to the National Register. In January 2006, that MPDF went out for comment to the State Engineer, Bureau of Reclamation, Northern Colorado Water Conservancy District, Colorado Water Conservation Board, and Bureau of Land Management. While the Colorado Preservation Review Board recommended that the MPDF be forwarded to the Keeper of the National Register in February 2006, our office continued to work on incorporating comments from the Bureau of Reclamation before doing so. In subsequent years, our continuing edits to the document finally warranted reconsideration by the Review Board.

As an MPDF, it does not list any individual properties, but rather makes it easier for property owners to nominate their properties in the future to the National Register of Historic Places and take advantage of the incentives that program offers. It is strictly a thematic context that establishes the registration requirements for this type of property. The National Register requires property owner consent for any actual nominations of individual properties (36 CFR 60.2) and does not place any restrictions on the use of private property.

Per the National Park Service (see 36 CFR 60 for additional information):

- National Register listing places no obligations on private property owners. There are no restrictions on the use, treatment, transfer, or disposition of private property.
- National Register listing does not lead to public acquisition or require public access.
- A property will not be listed if, for individual properties, the owner objects, or for districts, a majority of property owners object.

To see the contexts already approved for Colorado, please go to:

<http://coloradohistory-oahp.org/programareas/register/1503/mps.htm>

Unrelated to the National Register process, Section 106 of the National Historic Preservation Act requires review of all historic properties (National Register listed or eligible) impacted by projects that involve federal monies (36 CFR 800.1(a)). Undertakings impacting ditches and canals in Colorado have routinely undergone review and consultation between federal agencies and the State Historic Preservation Office under this legislation. The MPDF does not change that process.

If you have additional questions or comments, please feel free to contact Heather L. Bailey, Ph.D., State and National Register Historian, either by email ([heather.bailey@chs.state.co.us](mailto:heather.bailey@chs.state.co.us)) or phone (303-866-4683).

THE COLORADO HISTORICAL SOCIETY

CIVIC CENTER PLAZA 1560 BROADWAY SUITE 400 DENVER CO 80202 [www.historycolorado.org](http://www.historycolorado.org)

## **DRAFT Colorado Water Congress Letter**

February 23, 2011

Mr. Edward C. Nichols  
State Historic Preservation Officer  
and President Colorado Historical Society  
1560 Broadway, Suite 400  
Denver, Colorado 80202

Steve W. Turner, AIA  
Deputy State Historic Preservation Officer  
Colorado Historical Society  
1560 Broadway, Suite 400  
Denver, Colorado 80202

Re: National Register of Historic Places Multiple Property Documentation Form Entitled "Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960"

Dear Messrs. Nichols and Turner:

First of all, the Colorado Water Congress (CWC) would like to thank you for extending the deadlines previously established for written comments and further consideration/possible hearing concerning the multiple property documentation form entitled "Irrigation and Water Supply Ditches and Canals in Colorado, 1787 to 1960." (Ditch Documentation Form.) The extension of time has allowed water users and ditch owners to better understand the Ditch Documentation Form, what it means, and its implications for the future. We also thank your staff for attending the CWC convention in January and presenting information about this process.

On behalf of its 350 organizational members, many of whom own, operate, or have property interests in irrigation and water supply ditches and canals in Colorado, the CWC hereby requests that the Colorado Historic Preservation Review Board (Review Board) reject the Ditch Documentation Form and terminate all further process concerning it. CWC does not believe that a public hearing is necessary. The reasons for this conclusion are stated in more detail below.

The CWC was founded in 1958 to assist in the conservation and stewardship of the water resources of the State of Colorado for the public benefit of present and future generations. Its membership includes large and small public and private water management organizations and water users, including individual farmers and ranchers, as well as the mutual ditch companies through which they frequently operate their ditches and canals. The CWC provides a forum where the water interests of the State strive to reach consensus on water issues. In addition, the CWC advocates positions on water policy; provides education and information on water issues affecting Colorado; and promotes a broad base of membership. Over the past two months, CWC membership has discussed and debated the Ditch Documentation Form and its implications. Through our CWC State Affairs Committee and its Board of Directors, CWC believes that there is a broad based consensus among water users and ditch owners that the Ditch Documentation Form is ill-conceived, not necessary, and on balance, can only lead to negative consequences for ditch and reservoir system owners. The supporting reasons for this position are summarized below.

### **GENERAL CONCERNS/OBJECTIONS**

According to our research, no owner of any ditch and reservoir system has requested either consideration or approval of the Ditch Documentation Form. At our convention seminar, your staff told us that four specific structures related to ditch companies have been listed on the historic register in the past. Apparently, this was done without particular problems. It is clear to us that ditch and reservoir

system owners are already free to request listing if they wish, and the process has worked in the past for those who have made such requests. Therefore, there is no demonstrated need to change the status quo through the consideration or adoption of the Ditch Documentation Form.

Your staff has stated to our members that adoption of the Ditch Documentation Form will have no specific impact on any individual ditch and reservoir system. We do not agree. As we understand the law, acceptance of the Ditch Documentation Form is a first step toward supporting formal nomination for listing of individual structures. That listing request can be initiated by either ditch structure owners, or third parties. We understand that formal listing cannot be done if the structure owners object. However, notwithstanding objection by the owner, a structure can still be nominated as eligible for listing. Even a statement of eligibility may trigger additional restrictions on water facility maintenance or other modifications if the work on the facility involves state or federal funding or approvals, or if a parallel process has taken place on the state list, and supplemented by county or municipal land use regulations. Therefore, it is a consensus among CWC members that the adoption of the Ditch Documentation Form can only lead to negative consequences for ditch and reservoir systems, and its consideration is neither friendly nor helpful to future ditch operations.

Additionally, we question the wisdom of spending state budget resources on consideration of the Ditch Documentation Form when no ditch system owner has requested it, it appears to be unnecessary, and state budget resources are in such short supply.

#### SPECIFIC LEGAL AND FACTUAL CONCERNS/OBJECTIONS

For reasons described to at least some extent in a letter dated January 6, 2011 from Mike Sullivan, Deputy State Engineer, CWC believes that at least some of the purported factual information listed in the Ditch Documentation Form is erroneous and unreliable. This is true in part because the research appears to have relied heavily upon DWR computer databases (water rights tabulation) that were compiled for the purpose of tabulating and administering water rights. However, water rights are not the same as the ditch and reservoir structures through which water is delivered. The Ditch Documentation Form appears to draw conclusions based on information from the water rights databases, as if it applied directly to ditch and reservoir structures. As such, it commits the age old sin of "mixing apples with oranges." As an example, it states that there are 22,858 ditches and canals in Colorado (Form at p.47). However, that is a number of water right listings in the water rights databases, and not the number of ditch and reservoir structures. Many and probably most ditch structures have multiple water rights that run through them. The result of mixing these apples with oranges is an overstatement in the number of ditch and reservoir structures that exist in Colorado. We will not repeat the other specific factual issues listed in the January 6 DWR letter, but are attaching a copy of it for convenience.

This Ditch Documentation Form is too general and over-inclusive, but at the same time also insufficient and thinly documented if the purpose is to document the history of all ditches and reservoirs in Colorado. Specifically, the text of the Form names and describes approximately 80 specific ditch and reservoir systems. Although we noted above that the number is suspect, the Form states that there are more than 22,858 such structures in the state. So, the logic of the request is that by summarizing the history of 0.3% of the ditches in Colorado, we have documented the history of all of them. This logic is flawed, and in this sense the Ditch Documentation Form is woefully incomplete and insufficient to accomplish its stated goal. On the other hand, if the purpose of the Form was to support an individual nomination, using its own numbers, there would be more than 22,775 ditches and canals that are not

named at all in the Ditch Documentation Form, and it would therefore be too general and incomplete to support nomination or eligibility for any of them. For these reasons, the Ditch Documentation Form cannot reliably be used to serve any of its stated purposes under the NHPA.

Another factual inaccuracy/implication of the Ditch Documentation Form is its clear suggestion that just because ditches and reservoirs began construction many years ago, their structures are old and historic. As a matter of fact, ditch and reservoir systems are constantly being maintained, upgraded, reconstructed, and modified to serve their utilitarian purpose – delivering water to irrigate the lands and serve the people of this state. For example, headgate structures are constantly being repaired and replaced with more modern equipment. If a ditch diversion dam was originally built 100 years ago, but was reconstructed in 2008, is it an old and historic structure, or a new and modern one? This reality suggests that a determination about the basic historical facts, the age and historic nature of any particular ditch or reservoir structure, and all other questions related to potential listing or eligibility under the NHPA are very fact specific, location specific, and system specific. In light of this, the Ditch Documentation Form is overly broad and can serve no useful purpose when considering the individual attributes of each ditch system. Stated differently, if the owner of an individual ditch system wanted to request NHPA listing, there is very little actual information in the Ditch Documentation Form that would support the request.

The Code of Federal Regulations provides some definition and guidance as a basis for evaluating National Register listing and eligibility. We reviewed the four specific criteria set forth at 36 C.F.R. 60.4, which include:

The quality of significance in American history, architecture, archeology, engineering, and culture ... and objects that possess integrity of location, design, setting, materials, workmanship, feelings and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or (b) that are associated with the lives of persons significant in our past; or (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or (d) that have yielded, or maybe likely to yield, information important in prehistory or history.

Our members think that it is readily apparent that these criteria are not satisfied by the Ditch Documentation Form. First, we think that a fundamental requirement of these criteria is that there be something special about individual structures given their location, design, etc. that makes them stand out as somehow uniquely historical in nature. If anything, the Ditch Documentation Form actually demonstrates that the opposite is true of most ditches and reservoirs – they are out there everywhere. One obvious theme of the Form itself is to document the general history of Colorado in the sense that the development of ditches, reservoirs, and the lands that they serve was a broad reality of our history, and it occurred in most areas of the state. Therefore, it proves that ditches and reservoirs are ubiquitous, but not particularly unique. Ironically, by attempting to describe at some length the many kinds of individual structures that often are found within ditch systems (including the headgates, canals and ditches, flumes, tunnels, pipes and culverts, siphons, laterals, pumps, sand traps, debris gates, waste and overflow gates, drop structures, turnouts or lateral headgates, non-structural field control devices, water measuring devices, borrow pits, bridges, retaining walls, access roads, and even vegetation – right down to the cottonwood trees growing along the ditch, Form at pp.29-41), the Ditch Documentation Form actually demonstrates just how utilitarian and rather mundane most ditch structures really are.

Taken literally, this pretty well demonstrates that there is nothing historically unique about most ditch structures.

The Ditch Documentation Form truly does not demonstrate that any individual structure is a unique and distinctive reflection of a specific type, period, or method of construction, or that it represents the work of a master or possesses high artistic value. Frankly, our members who are in the business of actually operating and maintaining ditch and reservoir structures can readily attest to the fact that most of these structures were built by farmers using utilitarian and low budget techniques to operate in the most cost-effective manner possible. Over the decades, they have been maintained and modified with the same goal. Although doing this job and delivering water was undoubtedly important to the development of Colorado in a generic sense, the Ditch Documentation Form does nothing to demonstrate that individual ditches and canals have "distinctive characteristics."

Another common fact that the Ditch Documentation Form seems to completely overlook is the fact that the majority of ditch and reservoir structures are in remote locations, and most are located upon private property which is inaccessible to the public. It is difficult for our members to imagine what useful purpose can be served by labeling such structures under the NHPA.

The Ditch Documentation Form makes a feeble attempt to give the Federal Register criteria some lip-service, Form at pp. 42-46. However, these statements there are all very general and really do nothing to enlighten anyone about substantive information that could actually meet these criteria for any specific ditch or reservoir system.

In summary, we could go on at greater length and list additional specific flaws contained in the Ditch Documentation Form, and individualized reasons why it does not accomplish the purpose it purports to accomplish. However, we think that the reasons listed above should be sufficient to convey the consensus view of CWC that further consideration of the Ditch Documentation Form is ill-advised. Given the likelihood of negative consequences that could befall the owners of ditch and reservoir systems as a result of further NHPA consideration, CWC requests that this proposal be withdrawn without putting water users through the expense and difficulty of additional hearings or other public process. However, we can assure you with some confidence that, if you hold a public hearing on this issue, ditch and reservoir owners will turn out in significant numbers to reiterate the kinds of concerns summarized above. Thank you for consideration of these comments. If you have questions or need additional information from us, please let us know.