

IBCC Colorado River Basin

1. February 24, 2014 Colorado Basin Roundtable Minutes – Legislative Update, Grand County reaches agreement with Denver Water on environmental mitigation, IBCC discussion of New Supply projects, Basin Implementation Planning continues

1. **Next Meeting: February 24, Glenwood Springs Comm Ctr, 12:00 – 4:00.**
 - a. March 6, 2014, Statewide Roundtable Summit, Marriott Hotel, Denver West.
 - b. Mon Mar 10 – CBRT Meeting
 - c. Mon Mar 24 – CBRT Meeting
2. **Reporter: These minutes were prepared by Ken Ransford, Esq., CPA, 970-927-1200, kenransford@comcast.net.**
3. **Colorado Basin Roundtable Members Present:** Kim Albertson, Gary Baumgardner, Paula Belcher, Linda Bledsoe, Jacob Bornstein, Art Bowles, Caroline Bradford, Stan Cazier, Lurline Underbrink Curran, Carlyle Currier, Fred Eggleston, Xcel (new industrial rep), Mark Fuller, David Graf, Karl Hanlon, Kathy Chandler-Henry, Mark Hermundstad, Hannah Holm, Bruce Hutchins, Diane Johnson, Alan Martellaro, Wes Mauz Silt Water Conservancy, Mike McDill, Louis Meyer, Ken Neubecker, Chuck Ogilby, Ken Ransford, Rachel Richards, Mel Rettig, Steve Ryken, Karn Stiegelmeier, Michael Wageck, Lane Wyatt, Bob Zanella
4. **Guests:** Lauren Berent, concerned citizen, Linn Brooks-Eagle River Water Special District, Paul Bruchez, rancher, Jim Campbell Thompson Glen Ditch Company, Don Chaplin-Director/DARCA, Kathleen Curry-Upper Gunnison Water Conservancy District, Dennis Davidson, NRCS, Carl and Katie Day, rancher, Peter Dodd, rancher, Morgan Hill-Garfield County Environmental Health, Angelo Fernandez-ERWSD, Angie Fowler-SGM, Brent Gardner Smith, Andrew Gilmore-Bureau of Reclamation, Richard Hart, Hannah Holm-CMU, Brent Jolley, Southside Conservation Rancher, NWCOG, Janice Kurbjun-SGM, Brendon Langenhuizen-SGM, Holly Loff-ERWC, Natalie Macsalka, conservation districts, Dick Morgan, NRCS Southside Conservation District, Peter Mueller-TNC, Brent Newman CWCB, Kelsey Nichols, Esq., Wood Nichols LLC, Laurie Rink-Middle Colorado Watershed Council, Warren Roberts, water efficiency consultant, Calvin Roberts, rancher, Heather Tattersall-Roaring Fork Conservancy, Chris Treese, CRD,, Bob Weaver-LRE, Kirby Winn, Garco, Amy Willhite-Xcel Energy
5. **Colorado basin snowpack is above average.** After the recent heavy snows, snow water equivalent levels are currently **132% in the Colorado River Basin and 115% statewide.** The Arkansas basin is 109%.
6. **Legislative update – Chris Treese, Colorado River District**
 - a. SB 14- 23, sponsored by Senator Gail Schwartz – **Irrigation efficiency savings can be left in the river.** Ken Ransford encouraged the Colorado Basin

Roundtable to support this bill, which would permit an irrigator to adopt efficient irrigation practices, such as lining ditches, or installing Rubicon check structures or pivot sprinklers, and leave the irrigation efficiency savings in the river.

- i. **The diversion savings could remain in the river to the lowest point of return flow** without being diverted by an upstream junior water right holder (such as the cities of Colorado Springs or Aurora which hold junior conditional water rights on the Fryingpan and Roaring Fork rivers).
- ii. This bill is **only concerned with non-consumptive savings** – historic consumptive use is not expected to change as a result of the efficiency improvements. Currently, Colorado law permits the CWCB to only receive donations of consumptive use, and not non-consumptive use savings.
- iii. **The bill could improve situations such as the Crystal River** which has a hole in the river in low-flow years - the Crystal **dropped from 26 cfs to 1 cfs** and then rose back up to 28 cfs on September 22-23, 2012, in the 6-mile stretch above Carbondale due to the practice of diverting water from the stream and dumping it back in downstream.
- iv. **Irrigation efficiency savings cannot be abandoned.** If the irrigator later returned to the previous flood irrigation regime, the previous diversions could be resumed so the reduced diversion amount is not abandoned.
- v. **The instream flow savings could only be donated to the Colorado Water Conservation Board**, and only pursuant to a Water Court decree which must find that no parties are injured by a change in return flow patterns.
- vi. This statute applies **only on the West Slope and in North Park in water division's 4-Gunnison, 5-Colorado, 6-Yampa-White, and 7-San Juan.**
- vii. **The statute was approved by the Senate Agricultural Committee** by a 6-1 vote on February 20, and the Colorado Water Congress supported it by a 17-3 vote. The Southwestern Roundtable supports it. Terry Fankauser of the Colorado Cattlemen's Association, Chris Treese of the Colorado River District, and John MacKenzie of the Ditch and Reservoir Company Alliance testified in support of the bill.
- viii. Kathleen Curry pointed out that **irrigators objecting** that an efficient irrigation practice could interfere with their diversions, and **incur legal and engineering fees.** Ken Ransford replied that

- 1) **The statute does not permit any other user on the stream to be injured**, and the proponent of an efficiency project has the burden to prove this.
 - a) **Both the CWCB and Water Court** must reach the conclusion that no other user will be injured before they will accept or approve an instream flow donation.
 - b) **This “no injury” determination will likely be made before the irrigation efficiency improvements are made.**
 - 2) The Fiscal Note to the bill suggests **this would only be used 5 times per year**, due in part to the great expense of Water Court. If an expensive objection battle loomed, it is likely that healthy stream proponents would look elsewhere.
 - 3) **Nonprofits such as Trout Unlimited or the Nature Conservancy** would likely be participating to help defray the costs of the efficiency improvements, along with the NRCS, Colorado Basin Roundtable Water Reserve Account Grants, CWCB loans, as is the case with the ditch lining project on East Mesa Ditch off the Crystal that the CBRT approved in January. Nonprofits would likely require CWCB and Water Court approval first since it would be too risky to first make the irrigation efficiency improvements only to find they could not help improve instream flows.
 - 4) **Currently an irrigator could adopt efficient irrigation practices that change the return flow pattern and no one could object to that.** It is only when the efficient irrigator tried to change its water right by selling it to a city, for instance, that a water right holder affected by an efficient irrigation regime could claim injury. One cost of owning a water right is the cost of having to defend it.
 - 5) **The water court decree could require continuing jurisdiction** so that if time proved that an irrigator were injured, the this could be remedied after that fact, for instance by storing water in a recharge reservoir that slowly trickled back to the river to mimic the previous return flow system. This is common in the S. Platte.
- ix. Colorado River District board members are concerned that this bill could **interfere with informal water-sharing arrangements** that have developed in river basins over time, where lower basin users permit upper basin users to divert water out of priority. **The Colorado Water Congress** subcommittee that is promoting this statute **agreed to accept an amendment** offered by Chris Treese that would permit the CWCB to take

these historic long-term practices into account when they agree to accept an instream flow.

- x. **The Northern Water Conservancy District and Colorado Farm Bureau want to limit this bill** so that the CWCB could only accept instream flow donations to **the decreed instream flow**, which is defined as the amount necessary **to preserve the environment to a reasonable degree**. The Instream Flow is often a minimal amount that environmentalists characterize as life support. Bill proponents are concerned with this amendment since instream flows have not been determined on many rivers, and the no-injury requirement of the statute grants sufficient protection to other river users.
 - 1) Agreement on this issue was not reached at the time these minutes were prepared, and **Ken Ransford can update the CBRT at its next meeting on March 10.**
 - 2) Ken Ransford tabulated **the total instream flow rights** held by the CWCB with a priority date earlier than 1900 **amount to only .2% of the water used in agriculture** in Colorado in 2005 according to USGS records.
- b. SB 14-17 - **If agriculture is dried up** because water is transferred in urban sprawl development, **the total area planted in bluegrass is limited to 15%.** Steve Harris and Bruce Whitehead of the Southwestern Roundtable drafted and supported this bill, and the Colorado Basin Roundtable supported this in December 2013. The agricultural community objected for fear that this would diminish the value of their water rights, and Republican legislators claimed this would interfere with local control. The bill was amended so that **the Water Resources Interim Committee will address this topic in the summer session**, a prelude to its likely re-introduction in 2015.
- c. SB – 103 - **Only Water Sense approved fixtures can be sold in Colorado hardware stores after 2016.** This **passed the Senate 19-16** and is headed to the House. The CBRT supported this in December 2013. Chris Treese mentioned this is already happening, as California requires low-flow indoor fixtures due to its chronic water shortages, and since Lowes and Home Depot design their products for the California market, most fixtures sold in Colorado are water sense anyway. Legislators representing **the agricultural community along the South Platte River downstream of Denver object to this bill** for fear that it will reduce water that flows into sewage treatment plants and then into the South Platte, thus reducing water that agriculture can use downstream.
 - i. **This is a partisan issue;** Senator Roberts of Durango was the sole Republican Senator that did not object to this bill.

- d. **SB 115 – The General Assembly has to approve the Colorado Water Plan.**
This was amended to provide that **additional hearings** will be held in Roundtables this summer and **before the Interim Water Resources Committee** to keep them apprised of the Colorado Water Plan. It has been pointed out that the Colorado Water Plan is not a law that can be changed, but a plan that is approved.
- i. The Colorado Water Plan is important because **if a water project becomes part of a Basin Implementation Plan, it will automatically receive political and funding support** from the CWCB to help assure its future passage.

7. **Grand County reaches agreement with Denver Water on Fraser River mitigation** – Lurline Curran-Underbrink reported that Grand County Commissioners authorized its staff to settle their concerns with Denver Water over environmental mitigation for the Moffatt Firming project. This project will divert 18,000 additional acre feet out of the Fraser River to Gross Reservoir which will be heightened to hold more water. It is the subject of the Colorado River Cooperative Agreement. Denver Water, Grand County and Trout Unlimited agreed on the following mitigation efforts.

- a. **Adaptive management.** Also known as “learning by doing,” Denver Water agreed to change its diversion practice in the future if environmental health declines, in contrast to adhering to a rigid diversion regime which, once adopted, is never changed regardless of its effect on the environment.
- b. **New river gauges will be installed** that are monitored by the USGS and that measure stream temperature and flow levels at the following locations:

Location of new river gauges	Minimum flow maintained if temp triggers are reached	Weekly average temperature trigger	Daily temperature trigger btw July 15 – Aug 31	CFS released once temp trigger	Total AF released
Fraser River below Crooked Creek near Tabernash	14 cfs (6 cfs above ISF)	62.6 ° F	70.2 ° F	4 cfs	250 af
Ranch Creek near Fraser Colorado	6 cfs (2 cfs above ISF)	62.6 ° F	70.2 ° F		
Colorado River below Windy Gap Reservoir and above Williams Creek Reservoir	NA	64.8 ° F	74.8 ° F		

- i. For example, if the Fraser River between July 15 and August 31 reaches a daily temperature of 70.2° F, or a weekly average temperature of 62.6° F, Denver Water will bypass up to 14 cfs until the temperatures drop back down below the above levels. This is 6 cfs above the 8 cfs Instream Flow (ISF) that the CWCBC has designated.
 - ii. **The minimum flows above will be maintained until the temperature drops back down** or Denver Water is no longer diverting water from the stream.
 - iii. **The weekly trigger is determined by** taking a minimum of 3 temperature readings spaced evenly throughout the day over a 7-day consecutive period.
 - iv. **The Learning by Doing (LBD) group includes** Denver Water, the Northern Water Conservancy District, Grand County, Middle Park Water Conservancy District, Colorado River District, Trout Unlimited, and Colorado Parks and Wildlife. If this group cannot decide on mitigation efforts, Colorado Parks and Wildlife will decide.
 - v. **Rivers affected:** LBD addresses the aquatic environment in the Fraser and Williams Fork Basins and the main stem Colorado River from the Windy Gap Reservoir outflow to its confluence with the Blue River.
 - vi. **If after 20 years** the Learning by Doing group decides these mitigation **efforts aren't working** and the Colorado Department of Public Health and the Environment agree, **Denver Water will spend \$1 million** to designing and constructing projects to address stream temperature issues. (At a 3% inflation rate, \$1 million will be worth \$553,676 in current dollars after 20 years.)
 - vii. Denver Water will continue to operate the Fraser River sediment pond catchment system (which the CBRT Water Reserve Account helped fund).
- c. **Flushing flows** will be maintained for 3 continuous days for up to the following amounts:

	Cub ft/ sec	Tot Ac Ft
Fraser River measured at the Winter Park USGS gauge	80 cfs	475
St. Louis Creek measured at the St. Louis Creek USGS gauge	70 cfs	415
Vasquez Creek measured at the diversion	50 cfs	297
Ranch creek measured at the USGS gauge	40 cfs	238
Total minimal flushing flows in these 4 creeks – assumes at least this much water is available		1,425

- i. **If after 20 years these are determined to have a minimal effect, Denver Water will contribute \$1 million** to design and construct projects that improve channel stability and sediment transport in the Fraser River Basin.
- ii. It is estimated that **Fraser River diversions will increase 18,000 af per year** when the Project is completed. **Denver Water diverted 52,912 af each year on average from 1990-2000.**
 - 1) **The flushing flows listed above and the 250 af bypass flows** to protect against high stream temperatures **amount to 2%** of the annual water projected to be diverted through the Moffatt Collection System.
- iii. In addition to the flows above, Denver Water is required by the US Forest Service to bypass flows into the 4 creeks above, which Denver Water estimates equal 2,000 to 3,000 af per year. This equates to a continuous 365-day flow of about 3-4 cfs.
- iv. **US Representative Tipton has sponsored a bill that would prevent the federal government from imposing** any water conditions on federal land permittees. Pitkin County fears this could prevent the USFS from imposing **bypass flows** such as the above.

Denver Water commitments during the 2015-2021 Interim Period:

To Colorado Parks and Wildlife to construct a barrier and restore cutthroat trout habitat	\$72,500
Escrow account for stream habitat restoration within 1 year of receiving regulatory approval for the Moffatt Firming Project. Denver Water will also pay for design, permitting, and maintaining the habitat improvement projects in addition to this. Stream habitat restoration will include planting trees to increase shade and cooler temperatures, deepening the river channel, or voluntary water bypasses to see what works in the Learning By Doing process.	\$750,000
Aquatic improvement projects	\$1,250,000
Water quality projects, including improvements at wastewater treatment plants	\$2,000,000
Riparian habitat improvement in the 17 mile stretch of the Colorado River below Windy Gap Reservoir. Denver Water will share this expense with the Northern Water Conservancy District, payable after the Moffatt and Windy Gap Firming Projects receive approval.	\$6,000,000

Wild and Scenic River funding – 1 year after receiving project approval, Denver Water will contribute funds to protect outstanding remarkable values (ORVs) of the Upper Colorado River, to be spent with the input of the Wild and Scenic Rivers stakeholder group.	\$1,000,000
Total	\$11,072,500
In addition, Denver Water will contribute 1.25% of its standard outside-service area rate for non-potable water to projects in Grand County for forest restoration and aquatic improvements.	

d. **Denver Water commitments during the Project Period (after 2021):**

Project Period enhancements (after 2021)	Funds	Annual Flows
Environmental enhancements	\$2,000,000	
Pump water from Windy Gap up to Granby Reservoir, to be released back down for habitat enhancement	1,000,000	
Releases from Denver Water’s Fraser collection system in Grand County		1,000
Releases from Williams Fork Reservoir		1,000

8. **IBCC Report on New Supply discussion** February 18. Stan Cazier reported that when we get into substance, it’s very difficult. The 3-paragraph West Slope Roundtable position statement , which was approved by the CBRT after much discussion in the fall of 2013, was controversial – for instance, the phrase, “Preserving the ability to meet West Slope needs” because “Preserving the ability to meet Colorado needs.” After discussing water availability for 2 hours, the **IBCC tabled it for further discussion.**

- a. **Sequencing** – Does the state construct the **IPPs before new trans-mountain diversions (TMDs)** or other way around. This wasn’t resolved, but it was where the meeting ended. The **State Engineer suggested they have equal priority.**
- b. West Slope’s problem historically is that it cannot agree among its own inhabitants and present a unified front to the Front Range. It hopes the state will to address equitable apportionment, which is a legal term for a governing body’s ability to **equitably apportion water between users rather than according to strict prior appropriation law.** It was recently invoked by the Fort Worth, Texas, in its lawsuit against Oklahoma over the Red River, but **the US Supreme Court** refused to apply it, in accordance with long-standing practice. The US Supreme Court, which has original jurisdiction to hear disputes between states, regularly **considers compacts to be contracts between parties that are**

assumed to have equal bargaining power, and thus it is loath to interfere with contractual arrangements that states have made.

- c. Whose ox gets gored – Colorado River Basin already gives over 500,000 af to the East Slope each year on average. It's not clear if TMDs will come out of the Green River or Yampa-White River. Either way, it increases the risk of a Compact Call.
- d. Kathleen Curry – **the Colorado River District should emphasize the risk of a Compact Call.** A subcommittee of West Slope Roundtables should be formed to address future Compact needs, with Colorado River District technical support.
- e. Carlyle Currier – The Colorado Basin Roundtable raised the issue that the West Slope should be reserved water for the Colorado Basin out of any additional water diverted to the Front Range.
- f. Rachel Richards – **Comments from the Colorado Basin Roundtable are shredded by the IBCC.** We don't see any water flowing West. Other IBCC members kept saying that **the West Slope needs to take care of the West Slope** and that West Slope concerns would not be supported by Front Range Roundtables.
 - i. Conservation – Low to Moderate are the goal – we've already addressed this and it's time to move on. IBCC members cannot change land use planning, so its **hands are tied when it comes to municipal and industrial conservation.**
 - ii. The West Slope has to pay to protect West Slope agriculture and non-consumptive water needs.
 - iii. Rachel – we don't want to see New Supply segregated from our conservation goals, and we want conservation requirements imposed on New Supplies used on the Front Range.
- g. Chuck Ogilby – **The West Slope needs to state we've given all we can,** and Carlyle Currier and Stan Cazier need to state this at the IBCC meetings.
 - i. Stan and Carlyle replied that **the IBCC understands the CBRT position** and White Paper.
 - ii. Stan – **the only way to get more water out of the Colorado River Basin is to wipe out agriculture in Grand Junction.** The Cameo Call keeps the Colorado River whole.

- h. **Karl Hanlon – We need to decide who our audience is.** That’s what the policy committee is designed for.
 - i. Ken Ransford said that the Roundtables are dominated by **water providers whose mission is to deliver water when requested**, and not to address the policy question of whether it is appropriate to dry up agriculture, limit bluegrass growth, or leave sufficient water in rivers to preserve river health. **We are bringing our concerns to the wrong audience, and the general public is more likely to be receptive to West Slope concerns than the IBCC.**
 - j. Jim Pokrandt- At a recent water law course for the public at Colorado Mesa University, the question was asked if **a TMD will save Front Range agriculture**. A South Platte representative said that **it would not unless conservation easements** are agreed to that **protect agriculture**. Ken Ransford notes that Eric Wilkerson said that **65% of the Northern Water Conservancy District’s water rights are now owned by municipal interests on the Front Range.**
9. **Louis Meyer – BIP Planning** – Louis commented that you never know what a project will entail until you get into it. Louis is not certain how the CBRT plan will be synthesized into Colorado’s Water Plan, but he does believe **the CBRT Basin Implementation Plan will form a blueprint for what will happen for a long time into the future in the Colorado Basin.**
- a. We need to **transition today into projects and policies**. Today the CBRT will break up into the following **watershed groups**, rather than functional groups that previously considered consumptive, non-consumptive, agricultural, and policy issues. The regions broke out into Grand, Summit, and Eagle Counties, and the Roaring Fork, Middle Colorado, and Grand Valley regions.
 - b. Schmueser Gordon Meyer (SGM), the contractor drafting the Colorado Basin BIP is making a **big effort to reach the public**, not just water providers whose business is coming up with water for the state’s next population doubling.
 - c. The Cameo Call & the Shoshone Call are extremely important to the Colorado Basin.
 - d. We have the July deadline, so we can’t kick issues down the road. In February and March we have to discuss projects and policies. Public outreach will continue between now and July.
 - e. April will be implementation strategies. We will be preparing the report in May and June.

- f. The Colorado Basin report will be 11" x 17", easy to read, and not a thick SWSI document. Local water providers have asked to approve the CBRT BIP, which is due July 15.
 - g. The recent Northwest Council of Governments NWCOG meeting was very good because it included Yampa Basin members – the discussion got lively when Moffatt County Commissioners supported the Flaming Gorge Pumpback under the belief that it would not affect the Yampa-White Basin. When NCCOG members said this could increase the risk of a Compact Call, **Yampa-White representatives said that if a Compact Call comes, they want the state to decide it under equitable apportionment principles** rather than according to strict Prior Appropriation.
 - h. Water attorneys have been very helpful about what is needed in their watershed.
 - i. When county commissioners attend town hall meetings, they are much more meaningful.
 - j. Next steps – transitioning from goals and measurable outcomes to projects and policies to meet non/consumptive needs.
 - k. DNR head Mike King was at the Colorado Mesa University meeting on February 14. He said that **a project identified in the Colorado Water Plan will receive political support, funding support, and logistical support.**
 - l. It's important to have more projects rather than less in the BIP, including non-consumptive projects as well.
10. Notes from the **Roaring Fork River Breakout Group**
- a. Brendon Langerhoizen, SGM engineer, noted **a lot of data on CBRT IPPs is missing.**
 - b. Also needed is **more information about who owns what water rights.**
 - c. Brent Gardner-Smith asked whether the projects on this list are an inventory, or whether they are approved projects. Louis Meyer said that – the list will come back to the Roundtable and need the support of the Roundtable, so **whatever IPPs end up on the list will have a stamp of approval.**
 - d. Jim Campbell noted that there are **a lot of small projects**, many with NRCS funding and support, that are **saving a few acre feet that add up** to significant savings. The **NRCS is a good source for this information.**